

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIASTATE OF TEXAS, )  
)

Plaintiff, )

VS. )

ERIC H. HOLDER, JR., IN )  
HIS OFFICIAL CAPACITY AS )  
ATTORNEY GENERAL OF THE )  
UNITED STATES, )

Defendant, )

ERIC KENNIE, ET AL., )

Defendant-Intervenors, )

THE TEXAS STATE CONFERENCE )  
OF NAACP BRANCHES, ET ) CASE NO. 1:12-CV-00128  
AL., ) (RMC-DST-RLW)  
) Three-Judge Court  
Defendant-Intervenors, )TEXAS LEAGUE OF YOUNG )  
VOTERS EDUCATION FUND, ET )  
AL., )

Defendant-Intervenors, )

TEXAS LEGISLATIVE BLACK )  
CAUCUS, ET AL., )

Defendant-Intervenors, )

VICTORIA RODRIGUEZ, ET )  
AL., )

Defendant-Intervenors. )

Page 3

## A P P E A R A N C E S

## FOR THE PLAINTIFF STATE OF TEXAS:

Mr. Adam Aston  
ATTORNEY GENERAL OF TEXAS  
Civil Medicaid Fraud Division  
209 W. 15th Street  
Austin, Texas 78701  
adam.aston@oag.state.tx.us

## FOR THE DEFENDANTS ERIC H. HOLDER, ET AL.:

Ms. Michelle McLeod  
U.S. DEPARTMENT OF JUSTICE  
1800 G Street, 7254  
NWB - Room 7202  
Washington, DC 20006  
michelle.mcleod@usdoj.gov

## RODRIGUEZ DEFENDANT-INTERVENORS:

Ms. Nina Perales  
110 Broadway, Suite 300  
San Antonio, Texas 78205  
nperales@maldef.org

## ALSO PRESENT:

MR. Luis Figueroa - Legislative Staff Attorney  
MALDEF  
110 Broadway, Suite 300  
San Antonio, Texas 78205  
lfigueroa@maldef.org

Mr. Glenn Bayron - Mi Familia Vota

Page 2

\*\*\*\*\*

## ORAL DEPOSITION OF

LYDIA CAMARILLO

JUNE 12, 2012

\*\*\*\*\*

ORAL DEPOSITION OF LYDIA CAMARILLO, produced as a  
witness at the instance of the Defendants Eric H. Holder,  
et al., and duly sworn, was taken in the above-styled and  
numbered cause on Wednesday, June 12, 2012, from 9:00 a.m.  
to 10:41 a.m., before Tamara K. Chapman, CSR in and for  
the State of Texas, reported by machine shorthand, at the  
Omni, 9821 Colonnade Boulevard, San Antonio, Texas,  
pursuant to the Federal Rules of Civil Procedure and the  
provisions stated on the record or attached hereto.

Page 4

## I N D E X

## PAGE

APPEARANCES..... 2

## EXAMINATION

Examination By Mr. Aston ..... 5  
CHANGES AND SIGNATURE..... 67

SIGNATURE PAGE..... 68

REPORTER'S CERTIFICATION..... 70

## E X H I B I T S

NO. DESCRIPTION PAGE

1 Notice 9  
(No Bates - 2 pages)  
2 SB 14 20  
(No Bates - 17 pages)  
3 5/1/12 e-mail from Carlos Duarte,  
Subject: Fwd: Take Action against  
"True the Vote"  
(Bates RODR-138) 32

Page 5

1 LYDIA CAMARILLO,  
2 having been first duly sworn, testified as follows:  
3 EXAMINATION  
4 BY MR. ASTON:  
5 Q. Good morning.  
6 A. Good morning.  
7 Q. My name is Adam Aston. I represent the State of  
8 Texas. Could you please state and then spell your full  
9 name for the record?  
10 A. Lydia Camarillo, L-Y-D-I-A C-A-M-A-R-I-L-L-O.  
11 Q. Have you ever been deposed before?  
12 A. Yes, I have.  
13 Q. How many times?  
14 A. I believe once.  
15 Q. Can you explain the case or was it for  
16 litigation?  
17 A. It was the -- it was the redistricting case.  
18 Q. And when was that deposition taken?  
19 A. I do not remember. I believe it was January, but  
20 I'm not absolutely sure.  
21 Q. So four or five months ago?  
22 A. Yes.  
23 Q. Okay. We're going to go over a few things to  
24 hopefully make this run smoothly, and then we'll get  
25 started. Okay?

Page 6

1 A. Okay.  
2 Q. Please answer audibly so the court reporter can  
3 hear you. No shaking or nodding of the head because those  
4 answers cannot be recorded. Okay?  
5 A. I understand.  
6 Q. If you don't understand my question or if you'd  
7 like for me to slow down at any point, please let me know.  
8 A. I will.  
9 Q. Please wait until I finish my question to answer,  
10 and I will try to wait until you finish an answer before I  
11 ask another question. Okay?  
12 A. All right. Thank you.  
13 Q. Your lawyer may object to a question, but even if  
14 she objects, unless she instructs you not to answer,  
15 you'll still be answering the question. Do you  
16 understand?  
17 A. I do.  
18 Q. Are you represented by counsel today?  
19 A. Yes, I am.  
20 Q. Who is your counsel?  
21 A. Nina Perales and Luis Figueroa. And MALDEF.  
22 Q. And when -- with MALDEF?  
23 A. Yes.  
24 Q. And could you please spell their names for the  
25 record?

Page 7

1 A. Oh, my goodness. Nina, N-I-N-A. Perales. I  
2 always spell it with --  
3 MS. PERALES: P-E-R-A-L-E-S.  
4 MR. FIGUEROA: Luis Figueroa, L-U-I-S  
5 F-I-G-U-E-R-O-A.  
6 THE WITNESS: Thank you for the help.  
7 MS. PERALES: You're very welcome.  
8 Q. (BY MR. ASTON) And when did that representation  
9 begin?  
10 A. I think it began informally when we began the  
11 conversations about redistricting. Oh, for this case?  
12 Q. Yes, ma'am.  
13 A. As soon as we decided to move forward with this  
14 case.  
15 Q. Do you know about when that was?  
16 A. I do not remember, but we felt that as soon as we  
17 knew that the legislation was going to move forward and it  
18 was going to be signed by the governor, we were going to  
19 prepare ourselves to move forward with the lawsuit if  
20 necessary.  
21 Q. So this would have been before the lawsuit was  
22 filed sometime last fall?  
23 A. Well, you asked formally. So it wasn't until we  
24 signed the form.  
25 Q. Do you understand that you've been designated to

Page 8

1 provide testimony today on behalf of the Southwest Voter  
2 Registration Education Project?  
3 A. Yes.  
4 Q. Unless I indicate otherwise, when I use the term  
5 "you" or "Southwest Voter" or "your organization" during  
6 this deposition, that term includes the Southwest Voter  
7 Registration Education Project and anyone acting on its  
8 behalf. Do you understand?  
9 A. I do believe that I'm speaking for Southwest  
10 Voter Registration Education Project, and I have the  
11 authority to do so.  
12 Q. But what I'm saying is if at any point in this  
13 deposition I say "you" or "your organization," what I'm  
14 referring to you is not you individually unless I make  
15 that explicitly clear --  
16 A. I understand.  
17 Q. -- I'm referring to your organization. Thank  
18 you.  
19 Did you prepare for your deposition today?  
20 A. I did.  
21 Q. What did you do to prepare?  
22 A. I read my former testimony. I reviewed SB 14. I  
23 looked at the notice, and I looked at other materials  
24 provided by my attorney.  
25 Q. When you're referring to your former testimony,

Page 13

1 Q. And you're prepared on Topic 8?

2 A. Yes.

3 Q. No. 9: Southwest Voter Registration Education  
4 Project's plans to assist registered voters to obtain  
5 identification required by Senate Bill 14.

6 You've been designated on this topic?

7 A. Yes.

8 Q. And you're prepared on this topic?

9 A. Yes.

10 Q. No. 10: Any activities by or on behalf of  
11 Southwest Voter Registration Education Project regarding  
12 Senate Bill 14.

13 Have you been designated on this topic?

14 A. Yes.

15 Q. And you are prepared?

16 A. Yes.

17 Q. And finally No. 11. Any activities by or on  
18 behalf of Southwest Voter Registration Education Project  
19 regarding Senate Bill 362 in 2009?

20 A. Yes.

21 Q. You've been designated?

22 A. Yes.

23 Q. And you're prepared?

24 A. Yes.

25 Q. I'd like to look at Topic 6 before we get any

Page 14

1 further on: Any policy making or advocacy-related work  
2 performed by or on behalf of Southwest Voter Registration  
3 Education Project regarding voter identification.

4 Does Southwest Voter engage in policy-related  
5 activity regarding voter ID legislation?

6 A. We have.

7 Q. And can you describe that advocacy activity?

8 A. We met with several members of the legislature to  
9 discuss this bill and other bills in the past, and we also  
10 provided testimony and I not only wrote but actually gave  
11 the testimony on SB 14. We also spoke to community  
12 leaders about this issue.

13 Q. You gave testimony in 2011 on this bill. Have  
14 you testified in the past on previous bills?

15 A. I believe I've testified every year that this  
16 issue was brought forth since '05.

17 Q. Does Southwest Voter write articles or conduct  
18 seminars?

19 A. We do, but we haven't done this issue.

20 Q. Present speakers?

21 A. We do, but we haven't done this issue.

22 Q. What about conduct studies or surveys?

23 A. No, that's another organization. No, we do not.

24 Q. And if it was testimony before the legislature in  
25 either a committee hearing or something like that, that

Page 15

1 would be publically available, correct?

2 A. That is correct.

3 Q. And as far as you know, you have -- or you  
4 believe you've testified not only in 2011 but in 2009 and  
5 perhaps in '7 and '05 as well?

6 A. I'm absolutely sure that I have.

7 Q. Let's talk a little bit about the background of  
8 Southwest Voter. When was the organization founded?

9 A. 1974.

10 Q. And do you know the corporate structure of the  
11 organization as a partnership or a 501(c)(3)?

12 A. It's a 501(c)(3).

13 Q. Do you know how many employees Southwest Voter  
14 has?

15 A. It has ten.

16 Q. And what is your role?

17 A. I'm the vice president.

18 Q. And what do you do as vice president?

19 A. Everything, including faxing.

20 Q. What else do you do in addition to the faxing?

21 A. One of my major roles is figuring out the ground  
22 operation, fundraising, media and being the spokesperson  
23 on these issues.

24 Q. Does your organization rely on volunteers?

25 A. Absolutely.

Page 16

1 Q. Do you know about how many volunteers you have in  
2 a given year?

3 A. We could have as many as 10,000 or more depending  
4 on the election cycle.

5 Q. So it fluctuates with whether it's an election  
6 year, but it can be up to 10,000?

7 A. Yes.

8 Q. And very possibly this year, it being not only an  
9 election year but a presidential election year, will this  
10 year be on the higher end?

11 A. This year would be on a higher end. That is  
12 correct. Unlike last year.

13 Q. You said "Unlike last year"?

14 A. Last year was not a presidential year.

15 Q. What are the organization's primary activities?

16 A. Voter registration, voter education and  
17 mobilization of the Latino voters.

18 Q. Does your organization drive voters to the polls?

19 A. We have. And we do.

20 Q. Anything else in addition to the registration and  
21 the education?

22 A. I'm not sure I understand what you're asking me.

23 Q. Any other sort of primary activities?

24 A. Well, if you're asking me what do I do in voter  
25 registration, that's a certain activity.

Page 17

1 Q. No, no. The organization itself, what are the  
2 primary activities in addition to --  
3 A. Our primary activities are voter registration,  
4 voter education and mobilization of the voters and, when  
5 necessary, have conversations about making sure the voters  
6 have a the right to vote. In this case, stopping a voter  
7 ID because we believe it's unconstitutional and it's  
8 intentional against the right of voters to vote and to  
9 cast a vote.  
10 Q. How many offices do you have in the State of  
11 Texas?  
12 A. One.  
13 Q. And where is that office located?  
14 A. San Antonio.  
15 Q. Do you have offices in any other states?  
16 A. Los Angeles.  
17 Q. And do you have operations outside of Texas or  
18 California?  
19 A. We have operations in other states depending on  
20 the year. In a presidential cycle it will likely be in  
21 five to ten states depending on how much money we raise.  
22 We are currently working in Los Angeles and we have just  
23 completed voter registration projects in Las Cruces and of  
24 course in Texas. We expect to do other states this year.  
25 Q. Do you know what other states you might?

Page 18

1 A. Arizona, New Mexico, Colorado, Florida and of  
2 course California and Texas for now.  
3 Q. Is Southwest Voter a membership organization?  
4 A. It is not. It is a 501(c)(3).  
5 Q. So you don't really have members or anyone joins,  
6 they just -- there's the ten employees and then whoever  
7 volunteers to assist, but it's not a collection of  
8 members?  
9 A. It is not a collection of members, that is  
10 correct.  
11 Q. Do you know what the annual budget is for  
12 Southwest Voter?  
13 A. It depends on the election cycle. This year is  
14 probably going to be a little bit over 1.5 million and it  
15 can go as high as 3 million depending on how much money we  
16 raise.  
17 Q. And are most of your -- the way you raise money,  
18 is it mostly through donations?  
19 A. It's all through donations.  
20 Q. Private?  
21 A. It's all private. It's either individuals,  
22 corporations, foundations. It's all private. You're  
23 welcome to make a donation as well, and we take them from  
24 Republicans and Democrats, if that's what you want to  
25 know.

Page 19

1 Q. But you don't receive grants from governmental  
2 entities?  
3 A. Never. On purpose.  
4 Q. The past year do you know about how much you've  
5 taken in in donations?  
6 A. I don't remember right now. Last year was a hard  
7 year. So I think it was not a big year. I don't remember  
8 right now. I can get you that later if you want it.  
9 Q. Has your organization made plans to assist voters  
10 with compliance with SB 14 if it goes into effect?  
11 A. We are hoping that the courts will agree with our  
12 assumption and assertion that this law violates the  
13 voters. So at this point we're not making plans. Should  
14 the courts agree with you and not us, then we have to  
15 refocus and figure out how we use resources that are very  
16 precious and limited to do so. So we're hoping that the  
17 courts agree with us so that we don't have to go there.  
18 Q. So if you haven't made plans, is it also fair to  
19 say that you have not implemented any plans to go into  
20 effect should Senate Bill 14 take effect at this time?  
21 A. We haven't implemented any plans. We know what  
22 we need to do if it needs to be done, but it hasn't been  
23 implemented.  
24 Q. If it's implemented, you said you know what you  
25 need to do. Can you explain what that is?

Page 20

1 A. Part of it will have to be a wide media campaign.  
2 It's very difficult for people to understand what are the  
3 rights and what are the requirements and what documents  
4 they can use or not use in order to be able to vote. As  
5 well as figuring out how we get them to places in order to  
6 get their IDs.  
7 Q. And then your organization, would you help them  
8 obtain those IDs if that became a requirement?  
9 A. I don't know yet. It depends on how much money  
10 it would take to do that. It depends. We might.  
11 Q. But you'll certainly educate the voters about  
12 what is required under the new law?  
13 A. That is correct. You know, it's 2.1 million  
14 voters that we're speaking of. In Texas.  
15 (Exhibit No. 2 was marked.)  
16 Q. (BY MR. ASTON) You've been given what is marked  
17 Exhibit 2. Take a minute to familiarize yourself with  
18 that.  
19 A. I remember this document.  
20 MR. ASTON: This is the document, or this  
21 version of it is the one that we attached to our complaint  
22 and that is what the Exhibit 1 designation means on the  
23 front cover.  
24 MS. PERALES: It's not signed.  
25 Q. (BY MR. ASTON) So you are familiar with Senate

Page 21

1 Bill 14?  
 2 A. I sure am.  
 3 Q. And you've read it?  
 4 A. I have read it.  
 5 Q. When did you first hear about the bill?  
 6 A. Oh, gosh. Probably in '05. It's evolving.  
 7 Q. What about this bill?  
 8 A. It's an evolving document. Probably in the  
 9 middle of 2010. We anticipated that this bill was going  
 10 to be brought forth.  
 11 Q. And when was the first time that you read the  
 12 bill?  
 13 A. When it was in the -- available to the public.  
 14 Q. After bill filing --  
 15 A. Yes.  
 16 Q. -- in the -- --  
 17 A. Well, whenever it's ready.  
 18 Q. Just before 2011.  
 19 Have you read it again since then?  
 20 A. Yes. Last night.  
 21 Q. Have you discussed this bill with other employees  
 22 at Southwest Voter?  
 23 A. With my president.  
 24 Q. And what did you discuss and when?  
 25 A. Simply that we're going to get deposed today.

Page 22

1 Q. But prior to learning of the deposition, did you  
 2 discuss this bill during the legislative --  
 3 A. Yes.  
 4 Q. -- session with --  
 5 A. Yes.  
 6 Q. -- employees at Southwest Voter?  
 7 A. I discussed the idea and the intent of the bill,  
 8 and I discussed what we thought would be the outcome  
 9 should this bill become a law.  
 10 Q. And with whom did you have those discussions?  
 11 A. With my president.  
 12 Q. Anyone else?  
 13 A. No.  
 14 Q. You've read the bill. Are you familiar with what  
 15 the different provisions of the bill do?  
 16 A. Yes.  
 17 Q. And --  
 18 A. Right now if you ask me what Section A, B, C is,  
 19 I will have to review it.  
 20 Q. Do you understand what forms of photo ID will be  
 21 accepted for voting at the polls?  
 22 A. Yes.  
 23 Q. Section 14 on Page 9. Turn there.  
 24 A. I do. What did you say? Page what?  
 25 Q. Page 9.

Page 23

1 A. I heard you say 14.  
 2 Q. Section 14.  
 3 A. Yes.  
 4 (Witness reviews document.)  
 5 Q. (BY MR. ASTON) Driver's license, personal  
 6 identification card. I think those are probably  
 7 self-explanatory.  
 8 Do you know what an election identification  
 9 certificate is?  
 10 A. I sure do.  
 11 Q. Military identification card?  
 12 MS. PERALES: I'm sorry. What's the  
 13 question?  
 14 MR. ASTON: If she's familiar that these are  
 15 the documents that -- or the photo IDs that would be  
 16 accepted.  
 17 A. Yes, I'm also familiar with the documents not  
 18 accepted.  
 19 Q. (BY MR. ASTON) United States citizenship  
 20 certificate that contains the person's photograph,  
 21 passport and a license to carry a concealed handgun?  
 22 A. You know, most citizenship certificates do not  
 23 have photos. They have your little feet.  
 24 Q. Do you know if any of the Southwest Voter's  
 25 employees lack a photo ID that would be required by Senate

Page 24

1 Bill 14?  
 2 A. I don't know that.  
 3 Q. Is Southwest Voter aware of any people who do not  
 4 have the photo IDs required by Senate Bill 14?  
 5 A. I am aware.  
 6 Q. All right. Can you identify them by name and  
 7 address, please?  
 8 A. Name and address?  
 9 Q. Sure.  
 10 A. I cannot identify them by name and address. I  
 11 can identify two individuals that are part of this lawsuit  
 12 with us, the young ladies, the Rodriguez, but I cannot  
 13 tell you their first names and I cannot tell you their  
 14 address.  
 15 Q. I am familiar with those two.  
 16 A. But they exist.  
 17 Q. We're going to talk with them this afternoon. I  
 18 know that.  
 19 Are you aware of any other citizens of Texas who  
 20 have not?  
 21 A. I believe those two women reflect many young  
 22 people like them, and I also believe there's also elderly  
 23 Latinos that will be going through the same thing that  
 24 these young women are.  
 25 Q. But again, Southwest doesn't know of any



Page 25

1 particular individuals --

2 A. At this time --

3 Q. But Southwest Voter is not aware of any other  
4 individuals other than your codefendants?

5 A. I don't have any names right now, if that's what  
6 you're asking. Which is different than your question.

7 Q. Does Southwest Voter represent anyone else in  
8 this litigation besides its organization?

9 A. Southwest Voter represents Southwest Voter, and  
10 we believe that in doing so we're representing the  
11 2.2 million Latinos that are registered to vote and the  
12 other 2.5 million that could register to vote in the State  
13 of Texas.

14 Q. About what percentage of the organization's  
15 budget is designated to voter registration activities?

16 A. About 80 percent.

17 Q. And about what percent is dedicated to voter  
18 education?

19 A. It's all mixed in there because in order to  
20 register somebody you ask them what's important about  
21 voting, and that includes the education. And when you  
22 turn them out to vote, you're also telling them why it's  
23 important for them to vote. So it's all configured  
24 together. I don't have it split up like that.

25 Q. So you would say education and registration

Page 26

1 combined --

2 A. Yes.

3 Q. -- make up about 80 percent --

4 A. Yes.

5 Q. -- of your budget?

6 A. Yes, we believe that once they are registered  
7 they will likely vote even if we are not able to turn them  
8 out to vote ourselves.

9 Q. So has your organization produced any reports on  
10 the voter ID legislation?

11 A. Reports, no.

12 Q. Did your organization provide its members or  
13 staff with any materials on voter ID during the 2011  
14 legislative session?

15 A. Only the MALDEF fact sheet, which I believe is  
16 part of your exhibit.

17 Q. Did your organization provide your members or  
18 staff with any materials on voter ID during the 2009  
19 legislative session?

20 A. I do not remember.

21 Q. Do you recall for 2007 or 2005?

22 A. I do not remember.

23 Q. Has your organization provided its members or  
24 staff with any materials on voter ID during any  
25 legislative interim, the time between the sessions?

Page 27

1 A. No.

2 Q. During the legislative session or before, did  
3 Southwest Voter meet with any interest groups about Senate  
4 Bill 14?

5 A. You're speaking of the last legislative  
6 legislation, correct?

7 Q. Correct.

8 A. Yes.

9 Q. With whom did you meet?

10 A. I believe we met with some in a general meeting  
11 with League of Women Voters. I believe the ACLU was there  
12 as well. Mi Familia Vota was there and other community  
13 groups.

14 Q. Do you know how often you met?

15 A. I believe we met four times or so. But I'm not  
16 absolutely sure.

17 Q. And do you know of any other organizations with  
18 which your organization met?

19 A. I don't remember right now.

20 Q. Did any of those groups provide Southwest Voter  
21 with any materials on voter ID legislation?

22 A. Well, I believe MALDEF was with us, and MALDEF is  
23 the one that provided the list that I was referring to.

24 Q. The fact sheet?

25 A. Yes.

Page 28

1 Q. Are you aware of any other documents?

2 A. That were presented, no.

3 Q. Did Southwest Voter provide its members or staff  
4 with talking points about Senate Bill 14?

5 MS. PERALES: Objection to the extent that  
6 it says Southwest Voter provided materials to its members,  
7 because the testimony is that they don't have members.

8 Q. (BY MR. ASTON) Did they provide to the staff --  
9 did they provide the staff with any talking points?

10 A. No, because I'm the one that was doing it. So  
11 it's me, myself and I.

12 Q. And did anyone provide your organization with  
13 talking points, not counting the MALDEF fact sheet that we  
14 discussed?

15 A. I don't think so, no. No, I'm pretty sure no.

16 Q. I hope to go about 45 minutes to an hour before  
17 we take breaks. So if you need a break at any time, just  
18 let me know.

19 A. Yeah. No, I'll ask you if I need to. I think  
20 I'm fine because I took some stuff to not cough too much.

21 Q. Does Southwest Voter Registration Education  
22 Project intervene along with other parties, correct?

23 A. Correct.

24 Q. And those parties include Mi Familia Vota  
25 Education Fund and two individual intervenors?

1 which was the -- in testimony.

2 Q. Request for production No. 7: All documents in  
3 your possession, custody or control, including e-mails and  
4 other communications that support your contention that  
5 Texas Senate Bill 14 was enacted with an impermissible  
6 purpose.

7 Answer: Defendant-intervenor has no documents  
8 responsive to this request for production.

9 And that was the answer you gave?

10 A. That's correct.

11 Q. And it remains true that you have no documents --

12 A. That is correct.

13 Q. -- with regard to --

14 A. That is correct.

15 Q. Let's talk for a few minutes about what you  
16 believe the effect of Senate Bill 14 will be. Does  
17 Southwest Voter contend that Senate Bill 14 will have the  
18 effect of denying or abridging Hispanics' and Latinos'  
19 right to vote on account of race, color or membership in a  
20 language minority group?

21 A. Southwest Voter believes wholeheartedly that  
22 SB 14 will have a negative impact on Latino voter turnout  
23 We believe it's a bill that ultimately was signed by the  
24 governor with the intent to discriminate and dilute the  
25 right of Latino voters. We believe that it is a result of

1 an emergency that was called by the Governor as a crisis  
2 on voter fraud that is nonexistent on a couple of  
3 realities that we have.

4 One, the Attorney General conducted a two-year  
5 study of over \$1.5 million to find a case that he never  
6 found. Second, the Secretary of State provided over  
7 600,000 names of individuals that are Latino that would  
8 not be able to provide the ID. And so we believe that the  
9 state of Texas in a crisis, financial crisis, was unable  
10 to provide the evidence of voter fraud.

11 We believe that it was around the time that  
12 redistricting was going to happen, when the state grew by,  
13 over the last ten years, 2.3 million more people, of which  
14 65 percent of that was Latino. Ultimately 90 percent was  
15 minority, and it was an attempt by the Governor and the  
16 legislators to stop the growth of Latino voters, as well  
17 other people of color.

18 We also believe that since the Attorney General  
19 was not able to provide any case after spending money that  
20 we don't have, that the State insists that it's going to  
21 be free when in fact this is not going to be free, for a  
22 couple of reasons.

23 First, a poor person may not have the resources  
24 to drive to wherever they have to pick it up. If they're  
25 lucky, there might be a Department of -- DPS, the

1 Department of -- a place where you pick up the card.  
2 There might not be a place for that. We know that 40 of  
3 them are closed. We know that another 30 were going to be  
4 closed as a result of the budget shortfall.

5 We also know that even if you can drive there,  
6 you might not have the right documentation to get an ID.  
7 Therefore, it is not free and it is not easy to obtain,  
8 and we believe it's another hidden tax poll.

9 We believe that the State of Texas created a  
10 crisis that doesn't exist, attacking Latinos, and it's at  
11 a moment when they wanted to create an anti-immigrant  
12 opportunity, because we all know that the people that vote  
13 are American citizens, not immigrants who are unable to  
14 vote.

15 Q. What is your evidence, in addition to what you  
16 just said, this will have a discriminatory effect? We can  
17 talk about purpose later, but discriminatory fact.

18 A. We believe that speaking and -- being on the  
19 ground with voters and speaking to them, that there are  
20 going to be individuals that are going to be harmed. We  
21 also believe in reading the Brennan report as a second  
22 source, we believe that that's our evidence. But our  
23 number one evidence is 38 years of history working on the  
24 ground with Latino voters and other voters of color.

25 Q. So other than your belief and the Brennan report

1 which says what? What is the Brennan report?

2 A. The Brennan report says that individuals will not  
3 be able to provide the documents, as many as two million  
4 in Texas.

5 Q. Do you have any other evidence that you believe  
6 supports your contention?

7 A. My 38 years of experience with the organization  
8 and speaking to voters.

9 Q. And what is that evidence?

10 A. Individuals telling us that they won't be able to  
11 produce the documentation.

12 Q. Who are these individuals?

13 A. Voters.

14 Q. Can you name any of them?

15 A. I cannot name any of them right now.

16 Q. Is that the entire universe of your  
17 organization's evidence that Senate Bill 14 will have the  
18 effect of denying or abridging Hispanics' or Latinos'  
19 right to vote?

20 A. That and the history of Texas having a history of  
21 discriminating against voters and having an intent against  
22 Latino voters and other voters of color.

23 Q. But that's all?

24 A. That's enough, don't you think?

25 Q. Does Southwest Voter contend that Senate Bill 14

1 will have the effect of denying or abridging  
2 African-Americans' right to vote on account of race,  
3 color, or membership in a language minority group?

4 A. I cannot speak for the African-American  
5 community, but I believe they have similar realities that  
6 the Latino community has.

7 Q. Do you have any evidence as to what effect this  
8 bill might have on African-Americans?

9 A. I do not have any evidence.

10 Q. Does Southwest Voter contend that Senate Bill 14  
11 will have the effect of denying or abridging  
12 Asian-Americans' right to vote on account of race, color,  
13 or membership in a language minority group?

14 A. I think that any voter that's Latino, Asian,  
15 black, that is poor, that doesn't have the identification,  
16 will be prohibited from voting if they're American  
17 citizens and they have the right to vote. I believe this  
18 bill, this law, whichever you want to call it, violates  
19 the constitutional rights and the Voting Rights Act of  
20 American citizens in Texas.

21 Q. Do you have any evidence as to the effect this  
22 bill will have on Asian-Americans?

23 A. I have the same evidence that I have for Latinos,  
24 which is understanding how voters feel.

25 Q. Has Southwest Voter conducted any studies or any

1 surveys on the effect that this bill will have on minority  
2 voters?

3 A. No.

4 Q. Has Southwest Voter conducted any surveys or any  
5 studies on the effect that previous voter ID legislation  
6 would have on minority voters?

7 A. No.

8 Q. Are you familiar with the polls regarding public  
9 support for voter ID legislation?

10 A. I am familiar with the polls. I am also familiar  
11 that there was a time when polls said that it was okay to  
12 have slavery. That doesn't make -- that didn't make it  
13 right then, and this doesn't make it right either.

14 Q. Are you aware of polls showing that the majority  
15 of Texans support a photographic ID requirement to vote,  
16 regardless of political affiliation?

17 A. I am familiar but that doesn't make it right, as  
18 the case in slavery.

19 Q. Are you aware of polls showing that the majority  
20 of Texans support a photographic ID requirement to vote  
21 regardless of their race?

22 A. No.

23 Q. Are you aware of polls showing that the majority  
24 of Texans support a photographic ID requirement to vote  
25 regardless of membership in a language minority?

1 A. I haven't seen anything like that.

2 Q. Do you believe that elderly voters are more  
3 likely than the average voter to lack a form of  
4 identification required by Senate Bill 14?

5 A. I believe that young voters and older voters will  
6 have a problem. For older voters, there was a time, if  
7 you were poor, that you were delivered by a midwife, and  
8 they may not have provided the right documentation, and  
9 therefore they might not have in their possession their  
10 correct certificate.

11 Q. But are you -- so that means --

12 So do you or do you not believe --

13 A. I've made my statement.

14 MS. PERALES: It's okay if he asks the  
15 question again just to get a little bit of clarity, and  
16 it's all right for you to answer.

17 THE WITNESS: Okay.

18 Q. (BY MR. ASTON) So your answer is yes?

19 A. I'm sorry. Ask again.

20 Q. Do you believe that elderly voters are more  
21 likely than the average voter to lack a form of  
22 identification required by Senate Bill 14?

23 A. I believe that elder Latino voters and young  
24 Latino voters are going to have a problem to produce the  
25 required IDs in order to vote in the state of Texas.

1 Q. Are you aware of Senate Bill 14's exception to  
2 the photo ID requirement for voters over the age of 65?

3 MS. PERALES: Objection. I'm sorry, I  
4 guess -- I will frame the objection as one for vagueness.  
5 I believe that the option would be to cast a mail ballot  
6 as opposed to voting in person for a person over 65.

7 MR. ASTON: That's correct.

8 MS. PERALES: Okay.

9 Q. (BY MR. ASTON) Are you aware that -- let me  
10 rephrase the question.

11 Are you aware that voters over the age of 65  
12 have the option to cast a mail-in ballot for which they do  
13 not need a photo ID?

14 A. If I remember correctly, the law states that you  
15 must be disabled, you must be traveling, before you can  
16 use the vote by mail. Am I incorrect?

17 Second, 65-year old voters who have voted  
18 traditionally love voting on election day in person.

19 Q. Do you believe that rural voters are more likely  
20 than the average voter to lack a form of identification  
21 required by Senate Bill 14?

22 A. I believe that Latino voters who live in rural  
23 Texas are more than likely poor. If they're young, they  
24 won't have the IDs required by this particular bill or  
25 law, and if they're older, they may definitely not have



Page 41

1 the appropriate documentation to acquire the  
2 documentations provided by the State in order to vote. I  
3 do believe that this law will jeopardize the right of  
4 Latino citizens who could vote in rural America Texas.

5 Q. Do you believe that indigent voters are less  
6 likely than the average voter to be appropriately educated  
7 about the change in the identification requirements for  
8 voting under Senate Bill 14?

9 A. I believe that the budget proposed by the State  
10 in order to educate voters is not sufficient and therefore  
11 it will also cost the taxpayer voters. And ultimately the  
12 poor voters in Texas will not be informed about the right  
13 to vote, or, more importantly, they will not have the  
14 right documentation in order to get the required  
15 documentation to vote in Texas should this law be  
16 implemented.

17 Q. Do you believe that indigent voters are more  
18 likely than the average voter to lack a form of  
19 identification required by Senate Bill 14?

20 A. I believe that the voters that are poor in Texas,  
21 including Latino voters who might not have the  
22 documentation, even if they could get it, might not have  
23 the money to be able to obtain it; therefore, it's a  
24 double tax.

25 MR. ASTON: Go off the record for a minute.

Page 42

1 (Break.)

2 Q. (BY MR. ASTON) A few more questions on this and  
3 then we'll move to a different topic.

4 A. Okay.

5 Q. Do you believe that indigent voters are less  
6 likely than nonindigent voters to be able to obtain a form  
7 of identification prescribed under Senate Bill 14?

8 A. Yes.

9 Q. And do you believe that elderly voters are less  
10 likely than nonelderly voters to be able to obtain a form  
11 of identification required under Senate Bill 14?

12 A. I'm sorry. I think I lost it. Say it again.

13 Q. Do you believe that elderly voters are less  
14 likely than nonelderly voters to be able to obtain one of  
15 the forms of identification?

16 A. Yes.

17 Q. Do you believe that disabled voters are less  
18 likely than other voters to be able to obtain a form of  
19 identification required under SB 14?

20 A. Yes.

21 Q. Do you believe that rural voters are less likely  
22 than urban or suburban voters to be able to obtain a form  
23 of identification required under SB 14?

24 A. Yes. And I think I answered that already.

25 Q. And I think we discussed before, you believe that

Page 43

1 young voters are less likely than other voters?

2 A. That's correct.

3 Q. Finally, do you believe that voters without a  
4 high school diploma are less likely than voters with a  
5 high school diploma to be able to obtain a form of ID?

6 A. I'm not sure, but yes.

7 Q. Let's talk about possession -- current possession  
8 of photo IDs. Do you know how many Texas registered  
9 voters lack one of the forms of photo ID that would be  
10 required under SB 14?

11 A. I believe the Secretary of State, by her own  
12 accounts, provided data that showed that there were about  
13 660,000 Latino voters that would not have the proper ID in  
14 order to vote. And I believe that there is others who  
15 believe that it is much higher. So at this point I have  
16 to rely on both, our perception, our understanding, our  
17 history, and what the Secretary of State and others have  
18 said.

19 Q. The Secretary of State's figures, did those  
20 include all of the IDs listed under SB 14 or were those  
21 just people who do not currently have a driver's license  
22 or a personal ID provided by the State of Texas or do you  
23 recall?

24 A. I don't remember.

25 Q. Can Southwest Voter identify any Texas registered

Page 44

1 voter who does not have one of the types of photo ID  
2 required by SB 14? Earlier you mentioned your two  
3 co-defendants.

4 A. Our two co-defendants.

5 Q. Are you aware of any other voters that you can  
6 name?

7 A. Not that the point.

8 Q. Your answer was, not at this point?

9 A. No.

10 Thank you for clarifying.

11 Q. Do you know how many Texas registered voters lack  
12 the documents necessary to get a state-issued photo ID?

13 A. I think I answered this already.

14 Q. This is a different question.

15 MS. PERALES: You may answer.

16 A. Ask me again. Maybe I didn't understand.

17 Q. (BY MR. ASTON) A moment ago we talked about who  
18 doesn't currently have the photo ID. What I'm asking now  
19 is do you know how many Texas registered voters lack the  
20 underlying documents that would be necessary to get a  
21 state-issued photo ID?

22 A. I'm not sure.

23 Q. Can Southwest Voter identify any Texas -- any  
24 Texas registered voter who does not have those documents  
25 necessary to get a state issued photo ID?

11 (Pages 41 to 44)

Page 49

1 federally issued photo ID, such as a passport or a  
2 military ID, that would allow them to vote even if Senate  
3 Bill 14 goes into effect?

4 A. I acknowledge that but I also acknowledge that  
5 they might not have it, so I think the point goes either  
6 way.

7 Q. Do you believe that Hispanic and Latino voters  
8 are more likely or less likely than other voters to have a  
9 passport?

10 A. Less likely. It costs money to travel so I don't  
11 know that they would have a passport. There is only a few  
12 of us that travel. And I don't believe that they would  
13 have the gun permits, certificate, but I don't know.

14 Q. The gun permit --

15 A. I guess my answer to your question would be, I'm  
16 not sure because it could go either way.

17 Q. But you acknowledge the possibility?

18 A. There is a possibility that they could have it,  
19 and there is a possibility they could not have it. So it  
20 might actually be worse. And it might be better. I don't  
21 know.

22 Q. But you acknowledge that a Hispanic or a Latino  
23 voter who has either a passport or a military ID would be  
24 able to vote even if Senate Bill 14 goes into effect?

25 A. Yes, since that's one of the allowed

Page 50

1 documentations where you could vote.

2 Q. Let's talk about the purpose of the bill.

3 A. Okay.

4 Q. You've -- in sort of talking about effect you've  
5 discussed purpose a bit. But does Southwest Voter contend  
6 that Senate Bill 14 was enacted with a discriminatory  
7 purpose?

8 A. I do.

9 Q. And what is the basis for that contention, what  
10 is the evidence that you have?

11 A. The history of Texas, a long history of Texas of  
12 being a state that we need to have Section 2 and Section 5  
13 of the voting rights to protect our rights because it's a  
14 state that is part of the southern states that have a  
15 history of discrimination.

16 The fact that this year was a year of  
17 redistricting and in the redistricting, people take --  
18 those in control want to keep their power and they want to  
19 have in -- their intent is to maintain it and so if it  
20 means stopping by creating other barriers, they will do  
21 so.

22 By the fact that the State claims that there was  
23 a crisis when in fact there was no crisis, even after the  
24 Attorney General spent significant amount of resource that  
25 could have been used for higher education for something

Page 51

1 like an infrastructure or cleaning the water or whatever  
2 is it is that we need. Found no voter fraud.

3 The fact that it's an attempt to attack the  
4 Latino community. We're talking about the Latinos who are  
5 the ones that are -- supposedly the ones that are voting  
6 fraudulently in person.

7 So, yes, I do believe that the State of Texas  
8 intentionally put this legislation to stop Latino voters  
9 and other voters from fulfilling their right to vote as  
10 American citizens.

11 Q. Do you have any other evidence that supports your  
12 contention that this bill was enacted with a  
13 discriminatory purpose?

14 A. I think that's evidence enough.

15 Q. But do you have any more?

16 A. I am sure I can find others.

17 Q. But at this time you have no more evidence?

18 A. At this time that's the only thing I want to say.

19 MS. PERALES: You have to answer completely  
20 for what you know right now.

21 A. Well, we know that 2.4 million more people grew  
22 in the state of Texas. We know that that growth is a  
23 result of -- 90 percent of it is because of the minority  
24 community. 65 percent of that is because of the Latino  
25 community. And there is a genuine fear, we believe -- I

Page 52

1 believe, by the laws that are being implemented. We know  
2 that the State of Texas has a history of violating and  
3 stopping Latino and other voters from voting.

4 Intent, as you know, is -- can be accumulative of  
5 all those things put together, and I believe that all  
6 those things put together demonstrate that the State of  
7 Texas has the intention to stop Latino and other voters  
8 from voting and, therefore, has the intent to purposely  
9 stop Latino voters who are American citizens and other  
10 voters from voting that are American citizens.

11 In particular because HAVA already exists, and  
12 the current law already allows us to vote with certain  
13 documentations and there is -- we found no evidence -- the  
14 State found no evidence of people who are -- who voted  
15 fraudulently in person.

16 Q. (BY MR. ASTON) Do you contend that preventing  
17 voter fraud was not the purpose of Senate Bill 14?

18 A. I contend that the State used that as a veiled  
19 attempt to say that in fact there was a crisis. But after  
20 the Attorney General spent \$1.5 million over two years and  
21 found no case, then what crisis exists? None whatsoever.

22 If there is no crisis and there is a bill to stop  
23 a crisis that doesn't exist and it's an added burden  
24 because we already have HAVA, and HAVA, as you remember,  
25 was established in 2000 with the idea that it would help

Page 53

1 America vote. That's why it's even called the Help  
 2 America Vote Act. And it provided for several documents.  
 3 People also know that when they sign the  
 4 certificate, it's an affidavit, a legal document. We also  
 5 know that undocumented, which is really the intent of this  
 6 stopping supposedly American citizens, claiming that it's  
 7 really fraudulent because noncitizens will not vote,  
 8 noncitizens, if their residence is here legally, do not  
 9 want to jeopardize their opportunity of becoming citizens  
 10 someday. And the undocumented certainly don't want to be  
 11 split from their families.  
 12 So we know that there is no crisis, we know that  
 13 American citizens, because they are the only ones that can  
 14 vote, are the ones that are being attacked by this bill  
 15 and this law and, therefore, its purposeful and  
 16 intentional.  
 17 And another example of the many patterns of  
 18 activities that happen in the State of Texas, including  
 19 polarized voting, we saw when Carrillo ran for office or  
 20 Judge Rodriguez ran for office, they were incumbents, they  
 21 were supported by the establishment, they raised the most  
 22 money, but white voters refused to vote for them in their  
 23 own party.  
 24 I believe that that, as a cumulative, provides  
 25 purpose and intent.

Page 54

1 Q. Do you contend that the Texas legislature  
 2 intended to harm poor people by passing Senate Bill 14?  
 3 A. Yes. Some of the Latinos are poor, the working  
 4 poor. 25 percent or over.  
 5 Q. So their intent was to harm people because they  
 6 were poor?  
 7 A. Their intent was to stop Latino and other voters  
 8 from voting and, as a result, as a consequence, poor  
 9 people will be impacted, of which many of the Latino  
 10 voters are poor.  
 11 Q. You said as consequence. That might be an  
 12 effect. Is it Southwest Voter's contention that the  
 13 legislature intended to harm the poor?  
 14 A. Yes.  
 15 Q. What is basis for that contention?  
 16 A. In the statement I made earlier.  
 17 Q. Are you referring to the one from just a couple  
 18 of minutes ago?  
 19 A. Yes, sir.  
 20 Q. And that provides all the information you have on  
 21 intent with respect to poor people?  
 22 A. That's part of it, yes.  
 23 Q. What else is there?  
 24 A. Well, that's all I have in terms of the poor  
 25 people, yes. I'm saying that Latinos, a good portion of

Page 55

1 them, are working poor; therefore, they will be impacted  
 2 and, therefore, the answer as asked implies and says  
 3 directly that Latinos will impact it because they're poor.  
 4 Q. Do you contend that the Texas legislature  
 5 intended to harm young people by passing Senate Bill 14?  
 6 A. Yes. By the very fact that they did not allow  
 7 for student IDs to be used as an official, appropriate ID,  
 8 yes.  
 9 Q. So the intention was to harm --  
 10 A. Yes.  
 11 Q. -- young voters?  
 12 A. Yes. And we know that young voters in Texas are  
 13 mostly Latino and black.  
 14 Q. Do you contend that the Texas legislature  
 15 intended to harm elderly people by passing SB 14?  
 16 A. Yes.  
 17 Q. And what is the basis for your contention that  
 18 they intended to harm the elderly?  
 19 A. Because we know that the elderly are less likely  
 20 to have their documents because they either lost them,  
 21 they got destroyed or they were born at a time when they  
 22 didn't have the money to and they were not born in a  
 23 hospital where they were given the appropriate  
 24 documentation.  
 25 Q. Would you acknowledge that a vote by mail counts

Page 56

1 just as a -- an in-person ballot counts?  
 2 A. I would and I also have stated in my earlier  
 3 testimony that elderly people prefer to vote in person, A,  
 4 and as I understand the law, and I asked if I was wrong  
 5 for you to correct me, that in order for an elderly person  
 6 to vote by mail they must be disabled or they must be  
 7 traveling. Am I incorrect with your --  
 8 MS. PERALES: You just state your best  
 9 understanding.  
 10 THE WITNESS: Okay. Thank you.  
 11 Q. (BY MR. ASTON) Do you contend that the Texas  
 12 legislature intended to harm rural voters by passing  
 13 Senate Bill 14?  
 14 A. Yes.  
 15 Q. And what is the basis for that contention?  
 16 A. Because most of the offices where people can go  
 17 get their ID, should they not have them, in rural  
 18 communities have either been closed or will be shut down  
 19 as a result of the shortage, and rural people are usually  
 20 very poor people; therefore, they will not be able to have  
 21 the documentation because either they can't afford to buy  
 22 it, to get it, or they cannot afford the gas in order to  
 23 drive the long distances that are required and, therefore,  
 24 they're being intentionally discriminated against.  
 25 Q. Do you have any other evidence for the basis of

Page 57

1 your contention with regard to rural voters?

2 A. That's what I have.

3 Q. Do you contend that the Texas legislature  
4 intended to harm urban voters by passing Senate Bill 14?

5 A. Yes.

6 Q. And please explain the evidence and the basis for  
7 that contention?

8 A. Urban voters are more likely to be Latino and  
9 African-American, and this bill was intended to stop  
10 Latino and African-American voters from casting their  
11 vote, and that vote being counted.

12 Q. Please name for me all the members of the Texas  
13 legislature that Southwest Voter contends acted with a  
14 discriminatory purpose in supporting and voting for Senate  
15 Bill 14.

16 A. You would ask me this and I'm going to become a  
17 citizen. I'm sorry. That was disrespectful. I  
18 apologize.

19 I cannot remember the names of the members right  
20 now, but we can start with the authors of the bills. And  
21 I don't know the names so they're -- they're on record.

22 Q. So Southwest Voter --

23 A. At this point I do not remember the name of the  
24 members.

25 Q. -- contends that some or all of the authors of

Page 58

1 the bill intended to discriminate?

2 A. Yes. I also contend that those that voted in  
3 favor intended to discriminate.

4 Q. How many of them?

5 A. All of them that voted in favor of this bill, as  
6 well as the governor, who signed it.

7 Q. So Southwest Voter believes that every member of  
8 the Texas legislature who voted for this bill did so for  
9 the purpose of discrimination?

10 A. Yes.

11 Q. Do you have any evidence for that contention in  
12 addition to all of the things that we've been discussing  
13 before?

14 A. I do not have anything other than what I've said,  
15 and accumulatively that I believe was purposely intent to  
16 stop voters from voting that are Latino or otherwise.

17 MR. ASTON: Go off the record for two  
18 minutes.

19 (Break.)

20 Q. (BY MR. ASTON) Do you support the idea that only  
21 registered voters should be allowed to vote?

22 A. That's the law. Yes.

23 Q. Does Southwest Voter support the idea that one  
24 should have to register prior to voting?

25 A. Yes.

Page 59

1 Q. What is voter fraud? How would Southwest Voter  
2 define voter fraud?

3 A. Well, when someone does not have the right --  
4 according to the law of that moment, because laws  
5 change -- votes. That's how I would define it.

6 Q. Would you agree that voter fraud includes someone  
7 showing up to vote and claiming that he or she is a person  
8 that he or she is not?

9 A. Of course.

10 Q. And does Southwest Voter agree that voter fraud  
11 should be illegal?

12 A. Yes. But there is a difference between voter  
13 fraud and the intent of this law. I still -- in spite of  
14 me agreeing with everybody's agreement that there should  
15 be no voter fraud. And only those who have the right by  
16 the current laws to vote should vote and that their vote  
17 be counted. America still does not count the -- every  
18 presidential cycle, 1 million people will vote and they  
19 will not be counted. So we still have a problem in  
20 America.

21 But in this particular case, I think there is a  
22 problem. There is intent. And in spite of us believing  
23 that there should be no fraud, this bill does not in any  
24 way, shape, or form stop fraud. And there was no fraud or  
25 crisis established by the State.

Page 60

1 Q. Do you believe that in-person voter fraud would  
2 be harder to detect than mail-in voter fraud?

3 A. I'm not sure I -- that question is vague.

4 MS. PERALES: If you don't understand the  
5 question, you can say that you don't understand the  
6 question.

7 A. I don't understand. Give me an example, please.

8 Q. (BY MR. ASTON) Let me ask it this way. Do you  
9 think that the State of Texas should try and stop voter  
10 fraud?

11 A. I think if the State of Texas finds that there is  
12 voter fraud, then it should work to stopping it. But in  
13 this instance we know that this does not apply.

14 Q. Do you believe it would harder to detect  
15 in-person voter fraud?

16 A. That's why I don't understand your question. The  
17 whole intent of the SB 14 was to stop Latinos and  
18 African-Americans from voting, and it was really an intent  
19 to stop the so-called noncitizens who do not vote, who do  
20 not take part, who do not sign an affidavit saying that  
21 they're registered voters; therefore, this law does not  
22 apply.

23 But your questions have to do with a general  
24 sense of fraud --

25 Q. That's correct.

Page 61

1 A. -- and of course we do agree that there should be  
2 no fraud. But in this case, this bill is not the right  
3 tool, it's not the right law, and it violates our  
4 constitutional right as voters.

5 Q. Do you believe it would harder for the State of  
6 Texas to detect in-person voter fraud -- for example, one  
7 person going into one voting booth and voting one ballot  
8 for someone that he or she is not. Would that be harder  
9 to detect than someone taking a large stack of ballots,  
10 filling them out in the same handwriting and mailing them  
11 in?

12 A. I'm still not understanding your question. But  
13 let me state this. HAVA already provides for different  
14 opportunities for the poll workers to determine who is a  
15 voter and that that voter is a correct voter. So I do  
16 believe that there is already systems in place to stop  
17 fraud, if that is your question.

18 Q. Would you agree that in order to detect in-person  
19 voter fraud, one would have to be present and witness it?

20 A. I'm not sure I understand your question. Reframe  
21 or restate or give me an example.

22 Q. If someone goes into a voting place claiming to  
23 be a person that he or she is not, and is given that  
24 ballot and votes, would you agree that in order to stop  
25 that sort of voter fraud, you would need to stop it at the

Page 62

1 polling place?

2 A. Again, SB 14 does not do that. SB 14 is an  
3 attempt, purposeful and otherwise, to stop Latinos and  
4 other communities of color from voting. There are in  
5 place, according to many laws that were already  
6 established by the legislature and passed and signed by  
7 the Governor, so the State, to make sure that the  
8 elections law allows for systems to be in place to  
9 prohibit people from voting that do not have the right to  
10 vote. And HAVA clearly provides for documents so that the  
11 polling voters -- the watch -- the poll workers at the  
12 polls can identify whether that voter was there.

13 Second, because it's being -- the poll workers  
14 sign when somebody votes. Someone cannot sign and vote  
15 again. So I think we have the systems in place to stop  
16 any voter fraud, and SB 14 only is attempting to stop  
17 Latino American citizens and other voters who are American  
18 citizens from voting in America and in Texas specifically.

19 Q. Do you believe that requiring a voter to show a  
20 photo ID would make it harder for voters to vote claiming  
21 to be someone that he or she is not?

22 A. I do not believe that this law is going to do  
23 what you're trying to do.

24 Q. But do you believe it would be harder to vote as  
25 someone you are not if you are required to show a photo ID

Page 63

1 at the poll?

2 A. I already stated that HAVA already provides for  
3 those systems, and there are systems in place to stop us  
4 from having fraud in Texas. And there are no cases that  
5 we can really identify, and there is no crisis; therefore,  
6 this law is not necessary and all it is is an attempt to  
7 violate the voter rights of Latinos and other voters.

8 Q. So is the answer it would not make it harder?

9 A. My answer is that this bill will not answer your  
10 question. It will not remedy what does not exist because  
11 it doesn't exist in the way that this bill is --

12 Q. My question is just a general question. It's not  
13 about Senate Bill 14 particularly.

14 A. I know. But if you're going to use it, then I'm  
15 putting it on the record. My answer on the record is that  
16 there is no crisis, there is no fraud, and voters already  
17 know that if they are not the voter that's supposed to  
18 vote, that they cannot vote. And there are systems in  
19 place to stop a voter from creating fraud, starting with  
20 HAVA.

21 Q. The question is, though, would requiring showing  
22 a photo ID make it harder for someone to vote claiming to  
23 be someone that he or she is not?

24 A. I've already answered that question.

25 Q. I don't believe you have.

Page 64

1 MS. PERALES: Do you want to object as  
2 nonresponsive? Keep trying?

3 MR. ASTON: I guess so.

4 MS. PERALES: It's up to you.

5 MR. ASTON: If she's not going to answer the  
6 question, then, yes, I'll object as nonresponsive.

7 THE WITNESS: Thank you. Because I've  
8 answered.

9 MS. PERALES: He's looking for a yes or a  
10 no --

11 THE WITNESS: I understand.

12 MS. PERALES: -- which you can give along  
13 with an explanation of why you believe it's a yes or a no.  
14 But perhaps your answer would be more responsive if you  
15 started with a yes or a no, and then you are free to  
16 explain your answer.

17 THE WITNESS: But what's wrong with what I  
18 said?

19 MS. PERALES: I believe perhaps that it was  
20 not -- I can't say for Mr. Aston, but perhaps he is  
21 seeking a yes or a no, and then you are free in the rules  
22 of the deposition to give your explanation.

23 THE WITNESS: I understand that, but I want  
24 to sustain my answer, if it's okay with you.

25 Q. (BY MR. ASTON) Well, you're not going to retract



Page 65		Page 67	
1	anything that you've said.	1	CHANGES AND SIGNATURE
2	A. I understand. But I don't want to use any of the	2	PAGE LINE CHANGE REASON
3	information that I've given as an excuse for this law to	3	
4	be implemented when we all know that this law is an	4	
5	attempt to stop Latino voters who are citizens from	5	
6	participating in America's democracy.	6	
7	MS. PERALES: Would you like to ask the	7	
8	question again or have the court reporter ask the	8	
9	question, and then I'll ask Ms. Camarillo to begin her	9	
10	answer with a yes or a no and then explain her position.	10	
11	MR. ASTON: Would you read back the last	11	
12	question, please.	12	
13	MS. PERALES: Let's go off the record.	13	
14	MR. ASTON: Okay.	14	
15	(The requested material was read.)	15	
16	A. I don't know. But I restate my previous	16	
17	statements, which are that I believe that the State of	17	
18	Texas was not able to prove, in spite of spending	18	
19	\$1.5 million that we do not have, on trying to find	19	
20	fraudulent votes. I believe that this bill and law is	20	
21	specific and intended to stop citizens from voting, and	21	
22	citizens that are Latino and are not -- and are people of	22	
23	color.	23	
24	I believe that HAVA and other systems that exist	24	
25	already prohibit any voter fraud , and if -- and it's	25	LYDIA CAMARILLO

Page 66		Page 68	
1	clear by the fact that the State is unable to put forth	1	SIGNATURE PAGE
2	any real cases of fraud. Therefore, I believe that this	2	
3	law, all it does is violate the voting rights of Latinos	3	I, LYDIA CAMARILLO, have read the foregoing
4	and other communities of color. And I'm speaking of	4	deposition and hereby affix my signature that same is true
5	Latino citizens.	5	and correct, except as noted above.
6	And for the record my previous answer was better.	6	
7	So use both.	7	LYDIA CAMARILLO
8	MR. ASTON: I believe that's all I have.	8	
9	THE WITNESS: Thank you. I know you're	9	
10	doing your job, and I'm doing mine.	10	THE STATE OF _____)
11	MS. PERALES: Okay. Mr. Aston is now	11	COUNTY OF _____)
12	passing the witness to me, and I will reserve my questions	12	Before me, _____, on this
13	for the time of trial.	13	day personally appeared LYDIA CAMARILLO, known to me (or
14	I think we're done. Unless --	14	proved to me under oath or through
15	MS. McLEOD: No.	15	_____) (description of identity card
16	(THE DEPOSITION CONCLUDED AT 10:41 A.M.)	16	or other document)) to be the person whose name is
17		17	subscribed to the foregoing instrument and acknowledged to
18		18	me that they executed the same for the purposes and
19		19	consideration therein expressed.
20		20	Given under my hand and seal of office this
21		21	_____ day of _____, 2012.
22		22	
23		23	
24		24	
25		25	NOTARY PUBLIC IN AND FOR
			THE STATE OF _____
			COMMISSION EXPIRES: _____

<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS, ) Plaintiff, ) VS. ) ERIC H. HOLDER, JR. in his ) official capacity as Attorney ) General of the United States, ) Defendant, ) ERIC KENNIE, et al, ) Defendant-Intervenors, ) TEXAS STATE CONFERENCE OF ) CASE NO. 1:12-CV-00128 NAACP BRANCHES, ) (RMC-DST-RLW) Defendant-Intervenors, ) Three-Judge Court TEXAS LEAGUE OF YOUNG VOTERS ) EDUCATION FUND, et al, ) Defendant-Intervenors, ) TEXAS LEGISLATIVE BLACK ) CAUCUS, et al, ) Defendant-Intervenors, ) VICTORIA RODRIGUEZ, et al., ) Defendant-Intervenors. )</p> <p style="text-align: center;">***** ORAL DEPOSITION OF REBECCA DAVIO JUNE 15, 2012 *****</p>	<p style="text-align: center;">3</p> <p>1 APPEARANCES 2 FOR THE PLAINTIFF, STATE OF TEXAS AND THE DEPONENT: 3 John McKenzie OFFICE OF THE ATTORNEY GENERAL OF TEXAS 4 P.O. Box 12548 Austin, TX 78711-2548 5 209 West 14th Street 6 8th Floor Austin, TX 78701 7 (512) 936-1307 john.mckenzie@texasattorneygeneral.gov 8 Kathleen T. Murphy 9 OFFICE OF GENERAL COUNSEL 4805 N. Lamar Austin, TX 78773 10 (512) 424-2420 Kathleen.murphy@txdps.tx.us 11 FOR THE DEFENDANT, HOLDER, ET AL: 12 Jennifer Maranzano Elizabeth S. Westfall 13 U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Avenue, NW 14 NWB - Room 7202 Washington, DC 20530 15 (202) 305-7766 jennifer.maranzano@usdoj.gov 16 elizabeth.westfall@usdoj.gov 17 FOR THE TEXAS LEGISLATIVE BLACK CAUCUS, THE LEAGUE OF 18 WOMEN VOTERS OF TEXAS, THE JUSTICE SEEKERS, REVEREND 19 PETER JOHNSON, REVEREND RONALD WRIGHT AND DONALD WRIGHT: 20 Nancy Abudu (appearing by telephone) AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC. 21 230 Peachtree Street, NW Suite 1440 22 Atlanta, GA 30303 -1227 (404) 523-2721 23 nabudu@aclu.org 24 25</p>
<p style="text-align: center;">2</p> <p>1 ORAL DEPOSITION OF REBECCA DAVIO, produced as a 2 witness at the instance of the Defendant, was duly 3 sworn, was taken in the above-styled and numbered cause 4 on the JUNE 15, 2012, from 11:14 a.m. to 6:33 p.m., 5 before Chris Carpenter, CSR, in and for the State of 6 Texas, reported by machine shorthand, at the offices of 7 DECHERT, LLP, 300 West 6th, Suite 2010, Austin, TX 8 78701, pursuant to the Federal Rules of Civil Procedure 9 and the provisions stated on the record or attached 10 hereto. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">4</p> <p>1 INDEX 2 Appearances.....3 3 REBECCA DAVIO 4 Examination by Ms. Maranzano.....6 Examination by Mr. McKenzie.....224 5 Further Examination by Ms. Maranzano.....226 6 Signature and Changes.....227 7 Reporter's Certificate.....229 8 EXHIBITS 9 NO. DESCRIPTION PAGE MARKED 10 830 Notice of Deposition 15 11 831 E-mail Jan. 24, 2011 22 12 832 Texas Register Proposed Rulemaking Action 26 13 833 Texas Register Adopted Rulemaking Action 28 14 834 Eligibility Requirements for Issuance of 72 Texas Election Certificate 15 835 E-Mail Chain, Aug. 9, 2011 98 16 836 Application for Texas Election Certificate 114 17 837 E-Mail Chain, Jan. 13, 2012 117 18 838 Response to Questions from Senate Committee 120 19 of the Whole 20 839 E-Mail, Jan. 24, 2011 128 21 840 E-Mail, Jan. 24, 2011, Re: Cards Issued 131 Without a Photo 22 841 List of Offices by Region, Operating 133 23 Hours, and Light Days 24 842 DLD in the Know, April 9, 2012 150 25 843 DPS Response, Oct. 7, 2011 153</p>

<p style="text-align: center;">5</p> <p>1 844 May 2012 Average Customer Wait Time - Large Offices 166</p> <p>2</p> <p>3 845 Report: What Will It Take to Fix Driver License? 173</p> <p>4 846 Report: Continued Driver License Transformation 181</p> <p>5</p> <p>6 847 Workstation Information 186</p> <p>7 848 List of Closed Offices 187</p> <p>8 849 E-Mail Chain, March 14, 2012 thru March 15, 2012 193</p> <p>9 850 E-Mail, Feb. 26, 2011 201</p> <p>10 851 E-Mail Chain, April 5, 2011 203</p> <p>11 853 Tracking SB 14 211</p> <p>12 854 E-Mail Chain, March 30, 2012 to April 2, 2012 219</p> <p>13 855 Texas Administrative Code, Driver License Rules 221</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">7</p> <p>1 I will accommodate you. If there's a question pending,</p> <p>2 I would just ask that you finish the question before we</p> <p>3 take a break.</p> <p>4 From time to time, your attorney may make</p> <p>5 objections; he's making those objections for the</p> <p>6 record. So unless he instructs you not to answer, you</p> <p>7 can go ahead and answer.</p> <p>8 Do you understand these instructions?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any questions?</p> <p>11 A. No.</p> <p>12 Q. Are you on any medication today that would</p> <p>13 affect your ability to testify truthfully, accurately</p> <p>14 and completely?</p> <p>15 A. No.</p> <p>16 Q. Is there any other reason why you can't testify</p> <p>17 truthfully, accurately and completely today?</p> <p>18 A. No.</p> <p>19 Q. Today, during the deposition, I may use the</p> <p>20 term "EIC" to refer to an Election Identification</p> <p>21 Certificate. Do you understand that term, and is it</p> <p>22 okay if I use that abbreviation for the deposition?</p> <p>23 A. Yes.</p> <p>24 Q. And if I refer to DPS, I'll be referring to the</p> <p>25 Department of Public Safety; do you understand that?</p>
<p style="text-align: center;">6</p> <p>1 EXAMINATION</p> <p>2 BY MS. MARANZANO:</p> <p>3 Q. Good morning, my name is Jennifer Maranzano.</p> <p>4 I'm representing the Defendant, Attorney General Eric</p> <p>5 Holder, in this matter.</p> <p>6 Can you please state your name for the</p> <p>7 record?</p> <p>8 A. My name is Rebecca Davio.</p> <p>9 Q. Ms. Davio, have you ever been deposed before?</p> <p>10 A. Yes.</p> <p>11 Q. And what -- what was the nature of that matter?</p> <p>12 A. It was regarding our temporary visitor, driver</p> <p>13 licenses, and ID cards.</p> <p>14 Q. And when was that deposition?</p> <p>15 A. Several months ago. I'm sorry, I don't recall</p> <p>16 exactly.</p> <p>17 Q. Well, I'm going to go over some ground rules</p> <p>18 which you may be familiar with since you were just</p> <p>19 deposed recently. You've been placed under oath so it's</p> <p>20 important to testify truthfully, accurately and</p> <p>21 completely today. Our court reporter is taking down a</p> <p>22 transcript of everything that we say so it's important</p> <p>23 that we not talk over each other and also that you give</p> <p>24 verbal responses to my questions.</p> <p>25 If you need a break, just let me know and</p>	<p style="text-align: center;">8</p> <p>1 A. Yes.</p> <p>2 Q. Are you represented by counsel today?</p> <p>3 A. Yes.</p> <p>4 Q. By a number of counsel? Who are you</p> <p>5 represented by?</p> <p>6 A. John -- and Kathleen? Just John? Yes, John</p> <p>7 McKenzie.</p> <p>8 Q. And when did that representation begin?</p> <p>9 A. Yesterday.</p> <p>10 Q. Have you ever testified in court?</p> <p>11 A. No.</p> <p>12 Q. The case that you were deposed in, were you</p> <p>13 deposed in your capacity as a DPS employee?</p> <p>14 A. Yes.</p> <p>15 Q. And was the state of Texas a plaintiff or</p> <p>16 defendant in that matter?</p> <p>17 A. Yes.</p> <p>18 Q. Have you ever been involved in any other cases</p> <p>19 in which the state of Texas has been a plaintiff or</p> <p>20 defendant?</p> <p>21 A. No.</p> <p>22 Q. And did that case go to trial? I'm sorry, the</p> <p>23 case that you were deposed in?</p> <p>24 A. No.</p> <p>25 Q. What did you do to prepare for today's</p>

<p style="text-align: center;">9</p> <p>1 deposition.</p> <p>2 MR. McKENZIE: And I'll caution the</p> <p>3 witness not reveal the substance of any communications</p> <p>4 with counsel but, otherwise, you may answer the</p> <p>5 question.</p> <p>6 A. I reviewed documents and met with counsel.</p> <p>7 Q. (By Ms. Maranzano) What documents did you</p> <p>8 review?</p> <p>9 A. I read -- I reviewed the administrative rules,</p> <p>10 a list of offices that we have, the wait times in our 60</p> <p>11 largest offices, and a training job aide on all EICs.</p> <p>12 Q. And when did you meet with your attorney?</p> <p>13 A. Yesterday morning.</p> <p>14 Q. For how long?</p> <p>15 A. Approximately an hour.</p> <p>16 Q. Was anybody else present?</p> <p>17 A. Not during the briefing or the review.</p> <p>18 Q. Not during this meeting?</p> <p>19 A. No.</p> <p>20 Q. Okay. Other than your attorneys, have you</p> <p>21 spoken to anybody about your deposition today?</p> <p>22 A. Only to complain.</p> <p>23 Q. And have you spoken to anyone who's been</p> <p>24 deposed in this matter?</p> <p>25 A. No.</p>	<p style="text-align: center;">11</p> <p>1 A. I applied and was selected.</p> <p>2 Q. What did you do before you worked at DPS?</p> <p>3 A. I was the director of the vehicle title and</p> <p>4 registration division at the Texas Department of Motor</p> <p>5 Vehicles.</p> <p>6 Q. And that's a department that's separate from</p> <p>7 the DPS?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And how long were you there?</p> <p>10 A. The agency was created in November of 2009, so</p> <p>11 I was there for approximately eight months, if I'm doing</p> <p>12 the math right, and I was in that same position at the</p> <p>13 Texas Department of Transportation. My division was</p> <p>14 moved.</p> <p>15 Q. I see. So how long were you in the prior</p> <p>16 position before your department was moved?</p> <p>17 A. I began in that position in January of 2006.</p> <p>18 Q. And how did you learn about the position at</p> <p>19 DPS?</p> <p>20 A. A friend of mine actually told me about it.</p> <p>21 Q. And who was that person?</p> <p>22 A. Jan, sorry, Jan -- right now, last name escapes</p> <p>23 my memory.</p> <p>24 Q. Is it somebody who works at DPS?</p> <p>25 A. No.</p>
<p style="text-align: center;">10</p> <p>1 Q. Have you reviewed any transcripts from anybody</p> <p>2 who's been deposed in this matter?</p> <p>3 A. No.</p> <p>4 Q. Did you bring any notes or documents with you</p> <p>5 today?</p> <p>6 A. No.</p> <p>7 Q. What's your position at DPS?</p> <p>8 A. I'm the assistant director for driver license.</p> <p>9 Q. How long have you held that position?</p> <p>10 A. Two years and 14 days.</p> <p>11 Q. And what's your educational background?</p> <p>12 A. I have a B.S. in merchandising from U.T., I</p> <p>13 have a Master's of public affairs, and I have a Ph.D.,</p> <p>14 an interdisciplinary Ph.D.</p> <p>15 Q. And what's your Ph.D. in?</p> <p>16 MS. ABUDU: And I apologize for</p> <p>17 interrupting, but it is very difficult to hear the</p> <p>18 witness.</p> <p>19 MS. MARANZANO: We just moved the phone so</p> <p>20 let us know if that helps.</p> <p>21 MS. ABUDU: Okay, great.</p> <p>22 Q. (By Ms. Maranzano) And what is your Ph.D. in?</p> <p>23 A. Solid waste management and recycling.</p> <p>24 Q. And how did you come to work at the Department</p> <p>25 of Public Safety?</p>	<p style="text-align: center;">12</p> <p>1 Q. Can you tell me what your responsibilities are</p> <p>2 at the Department of Public Safety?</p> <p>3 A. I oversee the division. There's approximately</p> <p>4 1800 employees and I oversee the operation to issue</p> <p>5 driver licenses and identification cards and to provide</p> <p>6 driver records and maintain driver histories.</p> <p>7 Q. Do you work on developing administrative rules?</p> <p>8 A. Yes. I oversee that process.</p> <p>9 Q. Do you work with legislators on legislation</p> <p>10 that impacts DPS?</p> <p>11 A. Occasionally.</p> <p>12 Q. And when do you do that?</p> <p>13 A. When I'm asked to by our staff.</p> <p>14 Q. You'll be asked by DPS or by legislators?</p> <p>15 A. Both.</p> <p>16 Q. How many times have you worked on legislation</p> <p>17 since you've been at DPS?</p> <p>18 A. Can you define "worked on legislation?" I</p> <p>19 realize --</p> <p>20 Q. Well, let me ask you this: How many pieces of</p> <p>21 legislation have you been involved in since you have</p> <p>22 been at DPS?</p> <p>23 MR. McKENZIE: And I'm going to object to</p> <p>24 this is beyond the scope of what she's been noticed for</p> <p>25 But you can answer the question. It's</p>

<p style="text-align: center;">13</p> <p>1 just not going to bind the State.</p> <p>2 A. There were 35 bills that were passed, and I'm</p> <p>3 sorry, I don't have the exact number of how many bills</p> <p>4 that I looked at or reviewed or may have potentially</p> <p>5 been asked to testify on.</p> <p>6 Q. (By Ms. Maranzano) Uh-huh.</p> <p>7 A. I can't recall that number.</p> <p>8 Q. So when you say there are 35 bills that were</p> <p>9 passed, you mean 35 bills that impacted DPS?</p> <p>10 A. That impacted the driver license division.</p> <p>11 Q. I see.</p> <p>12 A. Last session.</p> <p>13 Q. Okay. All right.</p> <p>14 A. And I've only worked at the department for one</p> <p>15 session.</p> <p>16 Q. Okay. And you don't recall how many you were</p> <p>17 asked to testify on?</p> <p>18 MR. McKENZIE: Same objection.</p> <p>19 Q. (By Ms. Maranzano) Do you recall how many you</p> <p>20 actually testified on?</p> <p>21 MR. McKENZIE: Same objection.</p> <p>22 A. No.</p> <p>23 Q. (By Ms. Maranzano) Did you testify on SB 14?</p> <p>24 MR. McKENZIE: Same objection.</p> <p>25 A. Yes.</p>	<p style="text-align: center;">15</p> <p>1 MS. MARANZANO: May I have this marked as</p> <p>2 830.</p> <p>3 (Exhibit 830 marked for identification.)</p> <p>4 Q. (By Ms. Maranzano) I'm showing you what we're</p> <p>5 marking as Deposition Exhibit 830, can you take a look</p> <p>6 at it and tell me if you recognize it?</p> <p>7 A. Yes.</p> <p>8 Q. And what is this document?</p> <p>9 A. It's what got me here today.</p> <p>10 Q. Would that be a Notice of Deposition?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Can you take a look at Exhibit A, which is on</p> <p>13 Page 4, and just tell me what topics you are prepared to</p> <p>14 testify about today?</p> <p>15 A. 1, 2, 4, and 6.</p> <p>16 Q. Okay. Great. Ms. Davio, when did you first</p> <p>17 learn about Senate Bill 14?</p> <p>18 A. When it was first -- when it first came up</p> <p>19 during the last legislative session.</p> <p>20 Q. Do you remember when that was approximately?</p> <p>21 A. It was in January.</p> <p>22 Q. When you testified in front of the Committee of</p> <p>23 the Whole in the Senate, were you there as a resource</p> <p>24 witness?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">14</p> <p>1 Q. (By Ms. Maranzano) And did you testify to both</p> <p>2 bodies of the legislature?</p> <p>3 MR. McKENZIE: Same objection.</p> <p>4 A. I know for certain that I testified before the</p> <p>5 Senate. I'm trying to remember if I actually testified</p> <p>6 before the House or if I was only there to potentially</p> <p>7 be called. I'm sorry, I don't, at this moment, I don't</p> <p>8 recall.</p> <p>9 Q. (By Ms. Maranzano) Did you potentially testify</p> <p>10 before the House Select Committee that was studying,</p> <p>11 well, it's the House Select Committee on voter</p> <p>12 identification and voter fraud?</p> <p>13 MR. McKENZIE: Objection, speculation and</p> <p>14 also beyond the scope.</p> <p>15 You may answer.</p> <p>16 A. I don't recall.</p> <p>17 Q. (By Ms. Maranzano) Okay.</p> <p>18 A. I don't believe that I did.</p> <p>19 Q. Does DPS have a government relations division?</p> <p>20 A. Yes.</p> <p>21 Q. And do you oversee that division?</p> <p>22 A. No, I do not.</p> <p>23 Q. Do you work with the Governor's Office on any</p> <p>24 issues?</p> <p>25 A. None that I can especially recall.</p>	<p style="text-align: center;">16</p> <p>1 Q. And what was the purpose of having someone from</p> <p>2 DPS act as a resource witness during that consideration</p> <p>3 of the bill?</p> <p>4 MR. McKENZIE: I'm going to object on two</p> <p>5 separate grounds. One, it's beyond the topics that</p> <p>6 she's been noticed for. And two, to the extent that an</p> <p>7 individual legislator may have requested you to testify,</p> <p>8 do not identify the legislator who requested you to</p> <p>9 testify.</p> <p>10 A. I'm sorry, could you ask your question again?</p> <p>11 Q. (By Ms. Maranzano) Sure. I'm wondering what</p> <p>12 your understanding is of DPS's role as serving as a</p> <p>13 resource witness to the legislature?</p> <p>14 MR. McKENZIE: Same objections.</p> <p>15 A. The role would be that DPS was supposed to be</p> <p>16 issuing the EICs.</p> <p>17 Q. (By Ms. Maranzano) And at the point that you</p> <p>18 were testifying, do you recall if the EIC was a part of</p> <p>19 the bill that you were testifying about?</p> <p>20 A. Yes, it was. I'm not certain if it was</p> <p>21 referred to at that point in time as an EIC.</p> <p>22 Q. Okay.</p> <p>23 MS. MARANZANO: Could I have this marked?</p> <p>24 COURT REPORTER: Sure.</p> <p>25 MS. MARANZANO: Oh, it's been previously</p>



<p style="text-align: center;">21</p> <p>1 THE WITNESS: Still answer?</p> <p>2 MR. McKENZIE: You may answer, yes.</p> <p>3 A. I don't recall the specific changes. My guess</p> <p>4 is as the legislation evolved --</p> <p>5 Q. (By Ms. Maranzano) Uh-huh.</p> <p>6 A. -- over the course of a session, that, yes, it</p> <p>7 evolved, it changed.</p> <p>8 Q. Okay.</p> <p>9 A. But I can't delineate.</p> <p>10 Q. Based on the face of the bill, didn't we just</p> <p>11 look at Section 18 which required a personal</p> <p>12 identification certificate to be issued for free of</p> <p>13 charge by DPS, and in Section 14 of the signed version,</p> <p>14 it's entitled an "Election Identification Certificate";</p> <p>15 is that correct?</p> <p>16 A. Yes, that appears to be correct.</p> <p>17 Q. Prior to testifying in front of the Committee</p> <p>18 of the Whole, how did you prepare?</p> <p>19 MR. McKENZIE: Same objection. It's</p> <p>20 beyond the scope of what she's been noticed for.</p> <p>21 So if you -- if it would reveal the</p> <p>22 identity of a legislator who's requested information</p> <p>23 from you, I would instruct you not reveal the identity</p> <p>24 of that legislator.</p> <p>25 A. I reviewed documents, various and sundry</p>	<p style="text-align: center;">23</p> <p>1 legislation. The process is in the statute.</p> <p>2 MS. MARANZANO: Yeah, but all of these</p> <p>3 questions are related to the process of getting</p> <p>4 identification out of the driver's license offices and</p> <p>5 the various issues that might come up for a person who</p> <p>6 is going to get those.</p> <p>7 MR. McKENZIE: Yeah, but this isn't -- it</p> <p>8 doesn't ask about the process for getting a driver's</p> <p>9 license in here. It talks about how to get an election</p> <p>10 ID and what are the plans to implement and administer</p> <p>11 election IDs. I mean, I read these, this notice to</p> <p>12 specifically discretely deal with election IDs and</p> <p>13 forward-looking plans to implement and backward-looking</p> <p>14 facts about how DPS works and --</p> <p>15 MS. MARANZANO: But these questions -- I</p> <p>16 mean, Senate Bill 14 switched during the process and the</p> <p>17 EIC wasn't inserted until the end, but at the beginning,</p> <p>18 they were asking for an identification free of charge.</p> <p>19 So this doesn't use the term EIC, but it's about that --</p> <p>20 it's about the provision that became the EIC.</p> <p>21 MR. McKENZIE: Well, you can go ahead and</p> <p>22 lay your record, but we're going to object and say that</p> <p>23 this doesn't bind the state because it's beyond the --</p> <p>24 it's our contention it's beyond the scope of the</p> <p>25 deposition notice.</p>
<p style="text-align: center;">22</p> <p>1 documents.</p> <p>2 Q. (By Ms. Maranzano) Okay. Do you recall what</p> <p>3 those were?</p> <p>4 MR. McKENZIE: Same objections.</p> <p>5 A. No. You know, not in any detail.</p> <p>6 MS. MARANZANO: Can we have this marked?</p> <p>7 (Exhibit 831 marked for identification.)</p> <p>8 Q. (By Ms. Maranzano) I'm showing you what we're</p> <p>9 marking as Deposition Exhibit 831. Can you take a look</p> <p>10 at this and tell me if you recognize it?</p> <p>11 A. Yes.</p> <p>12 Q. And what is this document?</p> <p>13 A. It's an e-mail from Amanda Arriaga about</p> <p>14 different kinds of questions that were likely to come up</p> <p>15 during the Senate Committee of the Whole testimony.</p> <p>16 Q. And based on your recollection, did many of</p> <p>17 these questions come up during the Committee of the</p> <p>18 Whole?</p> <p>19 MR. McKENZIE: Same objection. That is</p> <p>20 way out of line of the scope. There's nothing in here</p> <p>21 about testimony before the Committee, SB 14 --</p> <p>22 MS. MARANZANO: But this is about -- if</p> <p>23 you look at this, it's about the process of getting</p> <p>24 identification free of charge.</p> <p>25 MR. McKENZIE: Well, this is about the</p>	<p style="text-align: center;">24</p> <p>1 MS. MARANZANO: Okay.</p> <p>2 Q. (By Ms. Maranzano) You can go ahead and answer.</p> <p>3 A. I'm sorry, I need you to repeat the question.</p> <p>4 Q. Yeah, I'm not sure if I remember myself.</p> <p>5 Are -- all right, let me start with this:</p> <p>6 Would you say that many of these issues came up during</p> <p>7 your testimony to the Committee of the Whole?</p> <p>8 MR. McKENZIE: Same objection.</p> <p>9 A. Yes.</p> <p>10 Q. (By Ms. Maranzano) Do you remember any of them</p> <p>11 in particular coming up?</p> <p>12 MR. McKENZIE: Same objection.</p> <p>13 A. There were questions about the offices and</p> <p>14 where they were located, and I think there were</p> <p>15 questions about the process in general. But it's --</p> <p>16 it's a pretty distant memory now. I'm sorry, I don't</p> <p>17 recall the specifics of exact questions that were asked.</p> <p>18 Q. (By Ms. Maranzano) Is it fair to say that there</p> <p>19 was an emphasis from the questioners about challenges</p> <p>20 that people might face in obtaining identification free</p> <p>21 of charge from the Department of Public Safety?</p> <p>22 MR. McKENZIE: Same objection, and also</p> <p>23 objection, vague.</p> <p>24 A. Were there questions about people -- that</p> <p>25 people had concerns --</p>

25

1 Q. (By Ms. Maranzano) Uh-huh.  
 2 A. -- about the process? That's probably a way to  
 3 summarize.  
 4 Q. And what -- what did you think about those  
 5 concerns?  
 6 MR. McKENZIE: Same objection.  
 7 A. I'm sorry, I don't know how to respond to that.  
 8 Q. (By Ms. Maranzano) Well, let me try it another  
 9 way: Did you think that those -- that there was a basis  
 10 for those concerns?  
 11 MR. McKENZIE: Same objection.  
 12 A. I think that, you know, people -- people want  
 13 driver license, they want state-issued identification  
 14 cards, whether that's a license to drive or an  
 15 identification card. They want that. And, you know,  
 16 we're working very hard to provide that service to them,  
 17 and as high a quality fashion and as quickly as  
 18 possible, and, you know, we're working to do that. We  
 19 don't always meet everyone's expectations.  
 20 Q. (By Ms. Maranzano) Okay. Ms. Davio, were you  
 21 involved in developing what became the rules for  
 22 implementing the election identification certificate?  
 23 A. Yes, ma'am.  
 24 Q. And what was your involvement?  
 25 A. I oversaw the development.

26

1 Q. Did you receive input on the rules from  
 2 anybody? Let me actually make my question a little  
 3 clearer: Did you receive input before --  
 4 MR. McKENZIE: Can we take a quick break?  
 5 My wife is repeatedly calling me. I'm worried it's  
 6 about my baby.  
 7 MR. MARANZANO: Yeah, let's go off the  
 8 record.  
 9 MR. McKENZIE: I'm sorry.  
 10 (Recess from 11:43 to 11:45 a.m.)  
 11 MS. MARANZANO: Okay, back on the record.  
 12 Q. (By Ms. Maranzano) Prior to issuing your  
 13 proposed regulation, did you receive input during the  
 14 development of that regulation from anybody?  
 15 A. From --  
 16 Q. Anybody.  
 17 A. -- driver license staff and DPS staff.  
 18 Q. Anybody outside the agency?  
 19 A. Not that I recall.  
 20 Q. Any legislators?  
 21 A. Not the that I recall.  
 22 (Exhibit 832 marked for identification.)  
 23 Q. (By Ms. Maranzano) Did you receive any input on  
 24 that rule from anybody outside of Texas?  
 25 A. This is a horrible copy.

27

1 Q. It is a horrible copy.  
 2 MS. MARANZANO: Do we have enough --  
 3 Q. (By Ms. Maranzano) The next exhibit that I'm  
 4 going to enter also has, at the back of it, the proposed  
 5 reg, but I'm going to be having you flip back and  
 6 forth. It may be a little clearer to look at it,  
 7 though. So we could do that.  
 8 But prior to talking about the exhibit,  
 9 did you receive input in the development of the proposed  
 10 regulation or the final regulation from anybody outside  
 11 of Texas?  
 12 A. From anyone outside of Texas?  
 13 Q. Uh-huh.  
 14 A. Not that I'm aware of.  
 15 Q. Okay. Do you think you would be aware if that  
 16 had occurred?  
 17 A. Maybe.  
 18 Q. Who was overseeing this process of developing  
 19 regulations for the Election Identification Certificate?  
 20 A. Well, we work in concert with our general  
 21 counsel.  
 22 Q. So is it fair to say it was you and the general  
 23 counsel who oversaw the process?  
 24 A. Probably.  
 25 MR. McKENZIE: Objection, slight

28

1 mischaracterization.  
 2 But you may answer. Go ahead and answer.  
 3 Q. (By Ms. Maranzano) Who do you mean by we work  
 4 in concert with our general counsel, who's that "we" in  
 5 that?  
 6 A. The -- I have a section that's responsible for  
 7 legislative review and implementation and they would  
 8 have been staff members and that section have been  
 9 responsible for doing the actual development work, and  
 10 they coordinated with general counsel.  
 11 Q. Okay.  
 12 A. The office of general counsel.  
 13 Q. And did they report to you?  
 14 A. I reviewed the final proposed rules, yes,  
 15 ma'am.  
 16 MS. MARANZANO: Can we have this marked  
 17 Exhibit 833?  
 18 (Exhibit 833 marked for identification.)  
 19 Q. (By Ms. Maranzano) Okay. So I've shown you now  
 20 two exhibits, one is marked 832 and one is marked 833.  
 21 Do you recognize these documents?  
 22 A. Yes.  
 23 Q. And what are they?  
 24 A. 832 is the proposed rule-making action on the  
 25 Election Identification Certificate and 833 is the

29

1 adopted version of those rules.  
 2 Q. Okay, if you can look at 832 for a moment, when  
 3 was this rule first published for comment?  
 4 A. I believe it was in October.  
 5 Q. October of what year?  
 6 A. October of 2011.  
 7 Q. Did you have any criteria that you used when  
 8 you developed this rule?  
 9 A. Any criteria for --  
 10 Q. For developing the rule, the proposed rule?  
 11 MR. McKENZIE: Just for clarification, do  
 12 you mean "you, DPS" or "you, witness"?  
 13 MS. MARANZANO: I mean you, DPS.  
 14 MR. McKENZIE: Okay.  
 15 THE WITNESS: That's the only  
 16 clarification you want from that?  
 17 Q. (By Ms. Maranzano) Maybe I could ask you this:  
 18 How did you go about the process of creating the  
 19 proposed rule?  
 20 A. Okay. So we began with the law.  
 21 Q. Uh-huh.  
 22 A. And then we looked to see what that applicable  
 23 sections were for us and went through and said, "Okay,  
 24 what needs to be clarified as far as, you know, okay,  
 25 what's an Election Identification Certificate, what

30

1 should it look like," that kind of thing.  
 2 Q. And what were your -- what were DPS's  
 3 priorities in trying to implement this program?  
 4 A. We wanted to be able to implement this as  
 5 efficiently and trouble-free as possible, and so that  
 6 meant that the processes -- we were looking to try and  
 7 keep the process for issuance of an Election  
 8 Identification Certificate as consistent as possible  
 9 with that for the issuance of an identification card or  
 10 driver license; that way, the employees wouldn't get  
 11 tripped up and go, "Oh, wait, not this document or that  
 12 document," and it also meant that we preserved the  
 13 integrity of the Election Identification Certificate.  
 14 Q. So I want to break that statement apart a  
 15 little bit. You said you started with the law, SB 14?  
 16 A. Uh-huh.  
 17 Q. What did the law require for the -- in regards  
 18 to the EIC?  
 19 A. In very general terms, it required that DPS be  
 20 -- to issue an Election Identification Certificate to  
 21 anyone that was -- did not have one of the existing  
 22 approved forms of photo identification, government-  
 23 issued photo identification, and that that be -- there  
 24 be no charge for that. That's in very general memory.  
 25 Q. Did it require anything more specific than

31

1 that? You can look at -- it's on Page -- at the bottom  
 2 of Page 13 of what we marked as Deposition Exhibit 5.  
 3 A. They were going to use this only for voting.  
 4 They had to be eligible to vote.  
 5 Q. And do you see that subsection, I'm sorry, keep  
 6 going.  
 7 A. Had to be similar in form but distinguishable  
 8 in color from a driver license or Personal  
 9 Identification Certificate. I'm sorry, this reminds me,  
 10 the Section -- the E on Page 14 --  
 11 Q. Uh-huh?  
 12 A. -- reminds me that we did interact with the  
 13 Secretary of State. That was in answer to a previous  
 14 question that you asked if we interacted with anyone  
 15 outside the state, and I just -- anyone outside of DPS.  
 16 Q. And that was in response to the question that I  
 17 asked about interactions with people in terms of  
 18 developing the proposed or final rule?  
 19 A. Yes, ma'am.  
 20 Q. Okay.  
 21 A. We had to develop the application, and then  
 22 work out the details of canceling if the person was not  
 23 eligible, and the expiration.  
 24 Q. And do you see Subsection F on Page 14?  
 25 A. Yes.

32

1 Q. And it cites a provision of the code? Can you  
 2 tell me what provision that is?  
 3 A. Section 521.142?  
 4 Q. Uh-huh.  
 5 A. I believe that's the identification  
 6 requirements.  
 7 Q. The identification for?  
 8 A. For driver license and IDs.  
 9 Q. Okay. And so that provision of the bill says  
 10 that you may require applicants to furnish the same  
 11 information. That would be required for driver's  
 12 license or personal ID; is that correct?  
 13 A. Yes.  
 14 Q. And do you recall when the Department of Public  
 15 Safety promulgated its proposed regulation, how many  
 16 comments you received?  
 17 A. It seems like there were two, if I remember  
 18 correctly, something from a legislator and from The  
 19 League of Women Voters.  
 20 Q. And you're looking at Deposition Exhibit 833,  
 21 for the record?  
 22 A. Yes. Yes, ma'am.  
 23 Q. Does that refresh your recollection about that?  
 24 Can you tell me what deposition Exhibit  
 25 833 is?

33

1 A. It is the adopted rule-making action from the  
 2 Texas Register.  
 3 Q. And do you print in the Texas Register all the  
 4 comments that you receive on a proposed rule?  
 5 A. It appears as if we did in this particular  
 6 instance. I think that's standard practice. They may  
 7 be summarized if they were copious, but...  
 8 Q. Is getting two comments fairly typical for a  
 9 proposed rule?  
 10 MR. McKENZIE: Objection, no foundation.  
 11 You may answer.  
 12 A. Of all the rules that we have proposed since  
 13 I've been in my position, two may be the most comments  
 14 that we've received. Typically, a lot of our rules  
 15 don't get comment since I've been there.  
 16 Q. Can you look at the first page of Deposition  
 17 Exhibit 832 for me? And do you see that --  
 18 A. First page or the --  
 19 Q. -- first page of the text. Yes. And if you'll  
 20 look, there's a statement about the fiscal impact; it's  
 21 in the second paragraph. Do you see that?  
 22 A. Uh-huh.  
 23 Q. It says, "The fiscal impact for state  
 24 government cannot be determined as there is no available  
 25 data to support the number of individuals who may

34

1 request a no-cost Election Identification Certificate."  
 2 Is it common to propose a rule without  
 3 having any analysis of the fiscal impact of that rule?  
 4 MR. McKENZIE: Objection, no foundation.  
 5 You may answer.  
 6 A. I think where you can't estimate, you have to  
 7 be able to state that.  
 8 Q. (By Ms. Maranzano) How many times have you seen  
 9 a proposed rule that states something similar to that,  
 10 that there's no ability to estimate the fiscal impact of  
 11 a rule?  
 12 MR. McKENZIE: Same objection.  
 13 You may answer.  
 14 A. I don't think that's necessarily common since  
 15 I've been there, but the -- the vast majority of our  
 16 rules don't have fiscal impact.  
 17 Q. (By Ms. Maranzano) Why is that?  
 18 A. They're modifying existing rules or, you know,  
 19 I mean, you have to be able to have reasonable  
 20 estimations to be able to make an estimation of the  
 21 cost.  
 22 Q. And in that sentence do you see that it says,  
 23 "There's no available data to support the number of  
 24 individuals who may request a no-cost Election  
 25 Identification Certificate?"

35

1 A. Yes, I see that.  
 2 Q. Is it fair to say that DPS actually had data  
 3 about who possessed certain forms of identification  
 4 required by SB 14?  
 5 MR. McKENZIE: Objection, asked and  
 6 answered.  
 7 Q. (By Ms. Maranzano) You can answer.  
 8 A. Okay. Is it -- could you ask your question one  
 9 more time?  
 10 Q. Sure. Isn't it fair to say that DPS actually  
 11 had data about who possessed some of the forms of  
 12 identification required by SB 14?  
 13 MR. McKENZIE: Same objection.  
 14 A. Yes, ma'am, we did have the number of people  
 15 that had a driver license and an identification card and  
 16 DPS also had information about the number of people that  
 17 had a concealed handgun license. What we did not have  
 18 was the number of people that would be interested, who  
 19 did not have one of other forms of identification and  
 20 who would be interested in obtaining an EIC.  
 21 Q. Had DPS chosen to go down this path, it could  
 22 have done a match between its data bases and the voter  
 23 registration databases to at least determine who among  
 24 registered voters did not possess one of those forms of  
 25 DPS issued IDs; isn't that correct?

36

1 MR. McKENZIE: Objection, speculation.  
 2 You can answer. Any objection you can  
 3 answer unless I say "don't answer."  
 4 THE WITNESS: Okay. Thank you for  
 5 clarifying. That sounds reasonable to me.  
 6 A. We could have done all manner of things but  
 7 who's to say what would have been a viable estimate?  
 8 Q. (By Ms. Maranzano) So did you make any attempts  
 9 to make an estimate at all of the fiscal impact of this  
 10 rule?  
 11 A. No, ma'am. Our -- my emphasis, in the driver  
 12 license division, was on figuring out what the rules  
 13 needed to be. How the -- how we were going to implement  
 14 this, how we were going to be able to train our  
 15 employees to be able to issue this, it was a very short  
 16 deadline. There were also requirements to develop  
 17 technology capability to be able to actually do the  
 18 issuance, that's where our focus was.  
 19 Q. Did anyone at DPS express a concern that this  
 20 program might be a significant expense for the agency?  
 21 A. We -- we do whatever the legislature tells us  
 22 to do.  
 23 Q. So was there concern about that?  
 24 A. I don't recall any specific concerns because no  
 25 one knew what numbers to expect.

37

1 Q. Okay. Do you see that the sentence after the  
2 sentence we were just looking at says, "The cost for  
3 production and issuance of the card is a \$1.67 each?"

4 A. Yes, ma'am.

5 Q. Is that still the case today, that that's your  
6 understanding of what the card would cost?

7 A. Yes, ma'am.

8 Q. What is the cost of producing a driver's  
9 license?

10 A. For us actually producing a card?

11 Q. I'm sorry, for a driver's license, uh-huh?

12 A. It's the same.

13 Q. Okay. And for a personal identification card?

14 A. Yes, ma'am, it's the same as well.

15 Q. Now earlier when we were talking about the  
16 priorities DPS had in developing this rule, you said  
17 efficiency and preserving the integrity of the  
18 certificate, and that you wanted the system to be  
19 trouble free?

20 A. Yes.

21 Q. So can you tell me, when you're talking about  
22 efficiency, what do you mean by that?

23 A. I'm looking at that probably primarily from the  
24 employees' standpoint. That when you have lots of  
25 different things that you do that are very close but

38

1 have different nuances, that increases the complexity,  
2 it increases the opportunity for problems for the  
3 employees and for our customers.

4 Q. Was there -- was there also priority in terms  
5 of efficiency for the clients, the individuals, who  
6 might be --

7 A. Oh, absolutely. I mean, if we -- if there's  
8 confusion on our side, that causes confusion for the  
9 customers. That's never a good thing. And so we wanted  
10 to make this process -- we strive to -- you know, unlike  
11 the reputation that we have, across the state, across  
12 the country, you know, driver license offices and DMVs  
13 in general are not known for providing great customer  
14 service, and that's not how we're trying to do our  
15 business in Texas and so we want to provide great  
16 customer service.

17 Q. Is it fair to say your reputation in Texas is  
18 not providing great customer service?

19 A. You know, I think in honesty, there's a mixed  
20 bag, but I can tell you that I was just reading to  
21 Kathleen -- she was trapped in a room with me, had to  
22 listen -- feedback from a customer that was just going  
23 on and on about how fabulous our employees were and how  
24 helpful and how friendly, and we get those comments a  
25 lot.

39

1 Q. Uh-huh. And do you also get comments from  
2 people who are less satisfied with the service at DPS?

3 A. Yes, we do. It's very difficult to serve  
4 virtually the entire population of the state and it's  
5 not even just residents because driver license and ID  
6 cards are available to temporary visitors to the state.  
7 And it's very, very difficult to serve the entire strata  
8 of the population and have everyone go away satisfied.  
9 And we are virtually the only function in state  
10 government that serves that entire strata of the  
11 population from very, very young, because you can come  
12 in and get an identification card when you're young; you  
13 don't have to drive, you don't have to be of driving  
14 age. And we also serve elderly customers that no longer  
15 drive at all. So that's a very wide age spectrum -- the  
16 population, you know, the -- everybody.

17 Q. So why do you think that makes it difficult?  
18 The variety of clients you're serving or the number of  
19 clients you're serving?

20 A. Well, because -- go around the table and see  
21 what people's expectations are. Everybody is going to  
22 have an expectation if I get four of the five people at  
23 the table, then, you know, there's still one person  
24 who's dissatisfied, who wanted something different.

25 Q. Okay. And in terms of the other priorities

40

1 that you mentioned: Trouble -- that you said that you  
2 wanted to keep the system trouble-free. Is that --

3 A. The customer service, yes, ma'am.

4 Q. That's what you were testifying about, okay.

5 And the other priority, I believe you  
6 said, was to preserve the integrity of the Election  
7 Identification Certificate?

8 A. Uh-huh.

9 Q. And what do you mean by that?

10 A. A driver license or a state-issued ID card or,  
11 you know, our -- that driver license is no longer just a  
12 license to drive, it's really the gateway to legitimacy  
13 because it establishes your identity and, you know, it's  
14 used for virtually every kind of transaction in society  
15 and so we take the responsibility of, you know, making  
16 sure that you are who you are before we issue you a  
17 driver license or an identification card. And we wanted  
18 to carry those same principles forward in the EICs.

19 Q. So, in other words, you want to ensure that  
20 someone who applies for an EIC is who they say they are?

21 A. Yes.

22 Q. And that's what you meant by preserving the  
23 integrity?

24 A. Yes.

25 Q. Okay. What -- what was your -- well, let me



<p style="text-align: center;">41</p> <p>1 ask you this: In terms of how you carried out that goal</p> <p>2 in preserving the integrity of the card, well, how did</p> <p>3 you carry out that goal?</p> <p>4 A. It's spelled out in the rules the documents</p> <p>5 that are required to be able to get an Election</p> <p>6 Identification Certificate.</p> <p>7 Q. And we're going to talk through that in a</p> <p>8 second, but is it, basically, modeling to some extent</p> <p>9 the process that a person would go through to get either</p> <p>10 a driver's license or a personal identification card?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. And what was your understanding of the purpose</p> <p>13 of the Election Identification Certificate?</p> <p>14 A. To provide photo identification for voting.</p> <p>15 Q. And did you understand that the individuals who</p> <p>16 would be applying for an EIC were individuals who did</p> <p>17 not have one of the other forms of identification</p> <p>18 required by Senate Bill 14?</p> <p>19 A. Yes.</p> <p>20 MR. McKENZIE: Objection, speculation.</p> <p>21 You answered.</p> <p>22 A. Sorry.</p> <p>23 MR. McKENZIE: That's fine. You get into</p> <p>24 a rhythm, it's hard to pause.</p> <p>25 THE WITNESS: It was an easy one, I knew</p>	<p style="text-align: center;">43</p> <p>1 particular populations that may or may not be affected</p> <p>2 would have been speculative. So we were worried about</p> <p>3 the integrity of the process and making sure that we</p> <p>4 could meet the deadlines.</p> <p>5 Q. And what deadlines are you referring to?</p> <p>6 A. The implementation deadline to be ready and</p> <p>7 able to issue election certificates beginning in January</p> <p>8 of 2012.</p> <p>9 Q. Okay. And one more question about that fiscal</p> <p>10 impact paragraph that we were looking at. Would there</p> <p>11 also be a cost for training staff about the EIC?</p> <p>12 MR. McKENZIE: You've got to answer it. I</p> <p>13 can't tell you the answer.</p> <p>14 THE WITNESS: (Laughing) Okay. I was</p> <p>15 trying to pause and give you the opportunity to object.</p> <p>16 A. There is -- we routinely train our staff about</p> <p>17 legislation that's coming up or policy changes or</p> <p>18 procedure changes. There were no out of -- no unusual</p> <p>19 out-of-pocket costs to train over and above traditional</p> <p>20 operations.</p> <p>21 Q. Well, certainly you would be needing to train</p> <p>22 your staff about the new program if it were implemented,</p> <p>23 correct?</p> <p>24 A. Yes, we did.</p> <p>25 Q. So am I understanding you that you would work</p>
<p style="text-align: center;">42</p> <p>1 the answer to that.</p> <p>2 Q. (By Ms. Maranzano) Did DPS make any particular</p> <p>3 efforts when they developed this rule to think through</p> <p>4 what population might be applying for the EIC?</p> <p>5 MR. McKENZIE: Objection, vague.</p> <p>6 A. I think we were thinking about the process.</p> <p>7 Q. (By Ms. Maranzano) And what do you mean?</p> <p>8 A. The process of implementation. You know, we</p> <p>9 have to be able to implement it.</p> <p>10 OFFICE STAFF PERSON: Lunch has arrived.</p> <p>11 MS. MARANZANO: Thank you.</p> <p>12 Q. (By Ms. Maranzano) And so I guess I'm not</p> <p>13 totally understanding your answer. Did DPS make any</p> <p>14 efforts to work into this proposed rule anything in</p> <p>15 particular that it felt like would address the community</p> <p>16 that it thought might be most likely to apply for an</p> <p>17 EIC?</p> <p>18 MR. McKENZIE: Objection, vague and</p> <p>19 objection, speculation.</p> <p>20 But you may answer.</p> <p>21 A. I don't think we necessarily thought about</p> <p>22 particular populations that might or might not. I mean,</p> <p>23 the information about the fiscal impact said we didn't</p> <p>24 know. We didn't have any data available to be able to</p> <p>25 estimate the number, so to be able to estimate</p>	<p style="text-align: center;">44</p> <p>1 that training into other existing trainings?</p> <p>2 A. Well, we routinely have to train our employees</p> <p>3 on new policies or procedures or legislation that's</p> <p>4 changed or new technology even, and so that's kind of a</p> <p>5 routine matter for us. The division has trainers and,</p> <p>6 you know, so I -- we do that routinely as a matter of</p> <p>7 our business, to provide training.</p> <p>8 Q. Okay. So it wasn't -- it wasn't an additional</p> <p>9 cost that you were foreseeing for this program?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Okay. Was there an estimate as to the cost for</p> <p>12 designing this new card, this new certificate?</p> <p>13 A. There was not an estimate at the time that the</p> <p>14 bill was proposed or the rules were proposed so I don't</p> <p>15 think the cost --</p> <p>16 Q. Why was there not an estimate for that?</p> <p>17 A. Because the card hadn't been designed at that</p> <p>18 particular point in time. We hadn't figured out how we</p> <p>19 were going to do it.</p> <p>20 Q. But wouldn't you budget some amount of money</p> <p>21 for the process of designing a new card?</p> <p>22 A. We looked at lots and lots and lots of pieces</p> <p>23 of legislation and we didn't -- we didn't know what --</p> <p>24 whether those pieces of legislation were going -- the</p> <p>25 bills were going to pass, and we didn't know what all</p>

45

1 the costs were for those bills.  
 2 Q. Okay. So we might be -- we might be  
 3 miscommunicating slightly. I'm just asking you about  
 4 why in -- when you're talking about the fiscal impact  
 5 for this particular rule, and am I correct that this  
 6 rule was promulgated after the SB 14 had been passed,  
 7 right?  
 8 A. Uh-huh.  
 9 Q. So I'm just wondering why there wasn't an  
 10 inclusion for a cost that it might -- that DPS might  
 11 incur to design a new card?  
 12 A. So first, I should point out I'm not Denise  
 13 Hudson, and estimating the costs were her  
 14 responsibility; she is the assistant director for  
 15 finance at DPS. But it appears as if the cost estimate  
 16 was based upon the number of -- any potential cost for  
 17 producing the cards for -- you know, producing the  
 18 cards. That's what appears to be based on.  
 19 Q. So there was no -- there was no cost estimate  
 20 included for designing a new -- a new identification  
 21 form that would be the EIC?  
 22 A. Yes.  
 23 Q. Yes?  
 24 A. Yes, there was no cost estimate for that. I  
 25 mean, you know, a lot of this stuff, it's just routine

46

1 course of business. That we -- there was another piece  
 2 of legislation, for example, that required us to put a  
 3 veteran indicator on people's driver licenses. You  
 4 know, it's like, that's just a cost of doing business  
 5 for us. Legislation is passed, and we have to be able  
 6 to do those things.  
 7 Q. But adding a new form of identification  
 8 certainly wouldn't be a routine thing that occurs,  
 9 right?  
 10 A. Well, I think it's kind of in the realm of  
 11 Legislation is passed, we have to implement whatever  
 12 legislation is passed.  
 13 Q. And when you normally include in a fiscal note  
 14 any costs that an agency would incur even if it's --  
 15 even if it's in your mind the cost of doing business, it  
 16 would still be a cost, correct?  
 17 A. I think what the agency would have been  
 18 thinking about would have been -- potentially, the  
 19 largest cost is to issue the cards, to actually go to  
 20 the production and the cost, and that we couldn't figure  
 21 out a way to come up with any kind of a reasonable  
 22 estimate for that.  
 23 Q. Would there be any new equipment that would be  
 24 needed to issue this card?  
 25 A. Nuh-uh. I'm sorry that was no.

47

1 Q. Thank you.  
 2 Did anybody direct DPS not to come up with  
 3 a cost for the EIC?  
 4 MR. McKENZIE: Objection.  
 5 If a legislator instructed you to do that,  
 6 don't identify the legislator or the contents of the  
 7 communication. Otherwise, you may answer the question.  
 8 A. No, I don't believe anyone directed us to not  
 9 come up with a cost.  
 10 Q. (By Ms. Maranzano) Other than what we've talked  
 11 about, are there any new materials or anything that the  
 12 driver's license offices -- I know you said they don't  
 13 need new equipment, any other new materials that they  
 14 might need for the EIC program that they don't already  
 15 have?  
 16 A. We came up with a training document for our  
 17 employees, but like I said, that's pretty routine for  
 18 legislation or new policy changes or that kind of thing.  
 19 Q. Okay. So I want to talk about the final rule  
 20 for a moment, which we have in 833. And can you look at  
 21 the first part of the first rule, which by is Admin Rule  
 22 15.181. Do you see that, it's on Page Texas 00296914?  
 23 Do you see that -- are you there?  
 24 A. Yes, ma'am.  
 25 Q. Do you see that there's a requirement that an

48

1 applicant be registered to vote or apply to register to  
 2 vote?  
 3 A. Yes, ma'am.  
 4 Q. Does DPS do any check to verify that a person  
 5 is actually registered to vote if they're -- if they  
 6 show up to request an EIC, will there be any  
 7 verification of whether or not they're registered to  
 8 vote?  
 9 A. Well, in the rules, it says, "Be a registered  
 10 voter in this state and present a voter registration  
 11 card issued to the individual or be eligible for voter  
 12 registration and submit an application." So that would  
 13 require them to present their voter registration card if  
 14 they claim that they were already eligible -- I mean, if  
 15 they were already registered.  
 16 Q. So if they show up, they need to show their  
 17 voter registration card or the voter registration  
 18 application?  
 19 A. Yes, ma'am.  
 20 Q. And if they don't have their voter registration  
 21 card but say they are registered, what would happen to  
 22 that applicant?  
 23 A. We do not have the capability to query the  
 24 system, the Secretary of State system, to be able to  
 25 verify their voter registration.

49

1 Q. Will that applicant be turned away?  
 2 MR. McKENZIE: Objection, speculation.  
 3 A. According to the rules, yes.  
 4 Q. (By Ms. Maranzano) Is that how you are planning  
 5 to train your staff?  
 6 A. I was trying to remember what the training  
 7 documents -- if they addressed that specifically, and  
 8 I'm sorry, I can't recall exactly. But the rules do say  
 9 that the applicant must be a registered voter and  
 10 present their voter registration card.  
 11 Q. Would it be for possible for an employee to  
 12 call a clerk or the Secretary of State's office and  
 13 determine whether that individual was a registered  
 14 voter?  
 15 MR. McKENZIE: Objection, speculation.  
 16 A. I think that would be outside the scope of our  
 17 capabilities, typically.  
 18 Q. (By Ms. Maranzano) Do you see the -- a little  
 19 bit lower on the page, it says -- it lists certain forms  
 20 of identification that an applicant is required not to  
 21 possess in order to apply for and obtain an Election  
 22 Identification Certificate. Does DPS plan to run any  
 23 checks on whether an applicant actually possesses the  
 24 DPS-issued forms of identification in that list?  
 25 A. The procedures do specify that we have to

50

1 verify that there is no driver license or personal  
 2 identification certificate that is unexpired. And that  
 3 includes if it's within the 60-day timeframe.  
 4 Q. And you are verifying that by looking at a DPS  
 5 database?  
 6 A. Yes.  
 7 Q. And are you going to do the same thing for a  
 8 concealed handgun license?  
 9 A. No. I don't currently have that capability.  
 10 Q. And when you say the procedures specify, that  
 11 is, you're talking about the rule, not the Senate Bill  
 12 14; is that correct?  
 13 A. I'm sorry, in that particular instance, I was  
 14 actually talking about our training materials.  
 15 Q. Okay. So that's a procedure that DPS --  
 16 A. That's an internal procedure for the driver  
 17 license division.  
 18 Q. Okay. And DPS determined that it should follow  
 19 that procedure, it wasn't mandated by the law; is that  
 20 correct?  
 21 A. That's correct.  
 22 Q. And why did DPS decide they wanted to check  
 23 that -- check whether or not a person had a driver's  
 24 license or ID card?  
 25 A. Because it's a requirement that if you have --

51

1 a person already has a driver license or personal  
 2 identification card, that it's not expired or it hasn't  
 3 been expired for more than 60 days, that they are not  
 4 eligible for an Election Identification Certificate.  
 5 Q. Was there any reason that DPS didn't feel as  
 6 though a person could state that to them?  
 7 A. I think that we felt where we had the  
 8 capability to readily check, that we should exercise  
 9 that capability.  
 10 Q. And I presume that you will not be checking  
 11 whether a person has a U.S. passport or U.S. citizenship  
 12 certificate because I wouldn't imagine that would be  
 13 easily accessible for DPS; is that correct?  
 14 A. Yes, ma'am.  
 15 Q. Is DPS going to run any other checks or compare  
 16 this person's information to any other databases that  
 17 DPS possesses?  
 18 A. No.  
 19 Q. Will there be any criminal history check, then,  
 20 to an EIC applicant?  
 21 A. No.  
 22 Q. And can you look at, in this document that  
 23 we're looking at, 833, if you flip to the first page, do  
 24 you see that there's comments there? And I believe that  
 25 you testified earlier that the League of Women Voters

52

1 had submitted comments and that I believe you said it  
 2 was by a legislator --  
 3 A. Yes.  
 4 Q. -- that submitted comments?  
 5 A. Yes.  
 6 Q. Do you see in the third paragraph on that page,  
 7 it actually identifies that the legislator was Senator  
 8 Leticia Van de Putte?  
 9 A. Yes.  
 10 Q. Yes? Can you look at the first comment and,  
 11 particularly, the phrase or portion of that comment that  
 12 suggests that League of Women Voters requested an  
 13 additional 30 days be allowed for processing time for an  
 14 expired document? Do you see that?  
 15 A. Uh-huh. Yes, I do.  
 16 Q. And what was DPS's concern with that  
 17 suggestion?  
 18 A. Wasn't 60 days spelled out in the legislation?  
 19 Was it not? Well, I mean, 60 days -- all the things  
 20 that are expired for 60 days, you know, that we allow 60  
 21 days for the -- all of the expiration of the documents,  
 22 and we have actually improved our processing time  
 23 significantly to less than 10 days to produce the card  
 24 and get it out. And there is a temporary receipt that's  
 25 issued at the time of application that can be used for

53

1 voting.  
 2 Q. Okay. And when you say it's less than 10 days  
 3 to get the card out, are you referring to a personal  
 4 identification card?  
 5 A. Driver license. We haven't actually issued an  
 6 Election Identification Certificate, but since it goes  
 7 through the same process as a driver license or the  
 8 personal identification card, we'd have to assume that,  
 9 generally, that is available to the applicant in a very  
 10 timely fashion.  
 11 Q. And is less than 10 days an average?  
 12 A. Uh-huh.  
 13 Q. Sometimes it takes more?  
 14 A. The statistics that I saw for last month might  
 15 have had one, what looked like an 11-day and lots of 4  
 16 or 5 days, so, yeah, I'd say less than 10 days is my  
 17 summary statistic. It's on the conservative side. We  
 18 have been getting them out in a very timely fashion.  
 19 Q. And the statistics you're referring to, is that  
 20 for all the offices across the state?  
 21 A. The driver license and personal identification  
 22 cards are issued centrally in Texas so it's only comes  
 23 from one location.  
 24 Q. Okay. But it includes people who apply at any  
 25 location around the state?

54

1 A. Yes, ma'am.  
 2 Q. Okay.  
 3 A. The application process is around the state.  
 4 The issuance process for the actual card is centralized  
 5 in Austin.  
 6 Q. Okay.  
 7 MR. McKENZIE: Can we take lunch pretty  
 8 soon?  
 9 MS. MARANZANO: Yeah. I just have maybe  
 10 one or two more questions.  
 11 MR. McKENZIE: Okay.  
 12 Q. (By Ms. Maranzano) Why -- why would using a  
 13 temporary card be preferable to extending the 60-day  
 14 time limit?  
 15 A. Well, it gives people -- they can vote with the  
 16 temporary receipt.  
 17 Q. Okay. All right. And we're going to talk more  
 18 about the temporary receipt in a little bit.  
 19 MS. MARANZANO: But I'm okay with taking  
 20 lunch now if you guys want to do that.  
 21 MR. McKENZIE: Okay.  
 22 (Recess at 12:30 to 1:11 p.m.)  
 23 MS. MARANZANO: Let's go back on the  
 24 record.  
 25 Q. (By Ms. Maranzano) So before lunch we were

55

1 talking about the rules, and I want to go back to  
 2 talking about the administrative rules for the Election  
 3 Identification Certificate, and if you could direct your  
 4 attention to Rule 15.182 about the identification of  
 5 applicants. Can you just take a look at that? And it's  
 6 15.182. Are you there?  
 7 A. Yes.  
 8 Q. Okay. Is it fair to say that this rule  
 9 essentially requires that an applicant show one form of  
 10 primary identification or two forms of secondary  
 11 identification or one secondary form of identification  
 12 and two supporting forms of identification?  
 13 A. Yes.  
 14 Q. And is that a similar structure to what is  
 15 required for a driver's license or a personal  
 16 identification card?  
 17 A. Yes.  
 18 Q. Are the forms of ID, or the forms of underlying  
 19 documentation similar to what is required for an  
 20 application for a driver's license or a personal  
 21 identification card?  
 22 A. Yes, except that the driver license and  
 23 identification documents also allow noncitizens, so  
 24 those documents have been removed, but otherwise they're  
 25 the same.

56

1 Q. Okay. So is it fair to say that there are  
 2 actually a number of additional primary forms of  
 3 identification that could be used for a driver's license  
 4 or a personal identification card that are issued to  
 5 noncitizens?  
 6 A. Yes.  
 7 Q. Okay. And is the purpose of this section and  
 8 these -- those requirements to show underlying  
 9 documentation, is the purpose of that -- or let me ask  
 10 you: What do you think the purpose of that is?  
 11 A. What is the purpose of the list of the  
 12 identifying documents?  
 13 Q. What is the purpose of this requirement that a  
 14 person show these documents in order to obtain an EIC?  
 15 A. So that there is confidence in that they are  
 16 who they say they are.  
 17 Q. So is it the position of DPS that showing these  
 18 combinations of documents in the manner that we talked  
 19 about, either one primary form of identification, two  
 20 secondary or one secondary and two supporting documents,  
 21 those combinations would verify somebody's identity?  
 22 A. Yes.  
 23 Q. Did DPS ever discuss whether it's necessary to  
 24 have somebody show photo identification in order to  
 25 verify their identity?

57

1 A. This is the list that we used.  
 2 Q. And just for the record, you're referring to  
 3 the list included in 15.181?  
 4 A. Yes, ma'am.  
 5 Q. And that does include nonphoto identification;  
 6 is that correct?  
 7 A. I'm sorry. It's actually 15.182.  
 8 Q. 182. Thank you.  
 9 A. Yes. There are forms of identification on  
 10 there that would not have a photo.  
 11 Q. And can you look back for me at the portion of  
 12 this document beginning that has the comments? And do  
 13 you see the second comment, which is part way through  
 14 that page, in the last sentence of that it says, "The  
 15 League of Women Voters asserted that only allowing the  
 16 driver's license or a personal identification  
 17 certificate that has expired for at least 60 days and no  
 18 more than two years is unnecessarily limiting." What is  
 19 DPS's position on that comment?  
 20 A. The official response found right below what  
 21 you just read says the, "Department disagrees with this  
 22 recommendation."  
 23 Q. And does it also say that, "The other documents  
 24 allowed for primary identification are also acceptable  
 25 for voting purposes or are accepted only for persons who

59

1 also acceptable for voting purposes or are accepted only  
 2 for persons who are not U.S. Citizens," were there any  
 3 documents that would be accepted for not U.S. citizens  
 4 but citizens might have as well?  
 5 A. I'm sorry. Could you restate the question?  
 6 Q. Sure. In the comment, "The League of Women  
 7 Voters was recommending allowing all photo IDs qualified  
 8 under SB 14 and all primary identification accepted for  
 9 driver's license or Personal Identification Certificate  
 10 as a primary identification for an Election  
 11 Identification Certificate." Do you see that?  
 12 A. What the League of Women Voters, the comment  
 13 that they made?  
 14 Q. Yeah.  
 15 A. Uh-huh.  
 16 Q. And then the response from the Department is  
 17 about the primary identification would either be  
 18 acceptable for voting purposes or are accepted only for  
 19 persons who are not U.S. citizens. And I guess what I'm  
 20 wondering is: Are the forms of identification that are  
 21 accepted for persons who are not U.S. citizens, are  
 22 those also forms of identification that citizens might  
 23 have?  
 24 A. No.  
 25 Q. No?

58

1 are not U.S. citizens"?  
 2 A. Yes.  
 3 Q. Is there any reason that a document that has  
 4 expired two years ago might have more validity or more  
 5 credibility than a document that has expired two and a  
 6 half years ago?  
 7 A. I think the reason for the dates in the rules  
 8 was to be consistent with the rules for -- required for  
 9 identification purposes for other forms. You know, it's  
 10 like, okay, these are the time frames. You had to set  
 11 some time frame.  
 12 Q. Okay. And when you say for other  
 13 identification, are you referring to the driver's  
 14 license and personal identification card?  
 15 A. (Witness nods head yes.)  
 16 Q. And is the value of consistency mostly for  
 17 employees of DPS?  
 18 A. It's employees and customers.  
 19 Q. And is that because of what we talked about  
 20 earlier today, that if something is simpler for  
 21 employees, it also means less likelihood of mistakes  
 22 which benefits the customers?  
 23 A. Yes.  
 24 Q. And in terms of this sentence about, "The other  
 25 documents are allowed for primary identification are

60

1 A. (Witness shakes head no.)  
 2 Q. Okay. Are you aware of whether noncitizens can  
 3 obtain some of the forms of identification required by  
 4 SB 14?  
 5 A. Well, I mean, a noncitizen conceivably could  
 6 have a school record or an insurance policy or those  
 7 kinds of things that were allowed under supporting.  
 8 Q. And noncitizens can also have a driver's  
 9 license, correct?  
 10 A. Yes.  
 11 Q. And can noncitizens have a personal  
 12 identification card?  
 13 A. Yes.  
 14 Q. And can noncitizens have a concealed handgun  
 15 license?  
 16 A. I don't know that. That's not my area.  
 17 Q. And can you look at the next comment from the  
 18 League of Women Voters, and it says that, "The League of  
 19 Women Voters recommended allowing more types of  
 20 secondary identification than birth certificates,  
 21 certificates of birth abroad, or specific court orders,  
 22 seeing that persons who cannot afford to secure  
 23 certified documents or for whom no birth certificate is  
 24 available, may be able to provide documents to meet the  
 25 requirements." And can you tell me what the



61

1 Department's position was on that comment?

2 A. So the response, the official response reads,

3 "The Department disagrees with part of this

4 recommendation. Expanding the list of acceptable

5 secondary documents to include those that are not issued

6 by a verifiable government source opens the process up

7 to greater fraud potential. That's why we request birth

8 certificates, not from a hospital, but from a government

9 entity." And then it goes on to say, "The Department

10 agrees with the recommendation to include citizenship

11 documents without photographs to accommodate naturalized

12 citizens with older documents." So the rules were

13 modified before they were finally adopted.

14 Q. So with regard to that -- the first part of

15 that response, I guess I'm wondering why would

16 nongovernment -- why would a document issued by a

17 nongovernment source lead DPS to believe that that was

18 opening the process up to a greater fraud potential?

19 A. If it was issued -- if a birth certificate was

20 issued by a governmental source, you could go to that

21 governmental source and verify it, and that there might

22 not be that same expectation if it was issued by a

23 nongovernmental source.

24 Q. And is DPS planning to verify birth

25 certificates prior to issuing an Election Identification

62

1 Certificate?

2 A. That's not a routine process.

3 Q. Would there need to be some sort of concern

4 about the validity of birth certificate in order for DPS

5 to do that?

6 A. We look at the -- the potential credibility,

7 the legitimacy of all the documents that we receive.

8 Q. Okay. And what would trigger you to do further

9 investigation?

10 A. It's all manner of things. If the document

11 doesn't look -- it's not consistent. If the paper

12 doesn't feel right.

13 Q. Who makes that determination?

14 A. Well, the initial -- the employee makes the

15 initial assessment, and if they have an issue, then they

16 would go to their supervisor, or, you know.

17 Q. And would it be the supervisor who would

18 actually decide whether or not there was going to be

19 further investigation of those documents?

20 A. Yes, probably. And it's likely that they would

21 potentially issue and have -- bring that up to other

22 sources for additional investigation. Driver license

23 does not do full-blown investigations of any documents.

24 Q. What -- who would they refer that to, then?

25 A. To other folks at the Department of Public

63

1 Safety. The law enforcement side of the house.

2 Q. And you anticipate the same sort of process

3 with regards to an EIC?

4 A. (Witness nods head yes.) Sorry. Yes.

5 Q. Thank you.

6 And so you said that the government-issued

7 sources were easier to verify, correct?

8 A. Yes, ma'am.

9 Q. Are there some nongovernmental documents that

10 you could also verify?

11 MR. McKENZIE: Objection, speculation, but

12 you may answer.

13 A. There may be.

14 Q. (By Ms. Maranzano) Did you look into including

15 any of those documents in this list?

16 A. This is the list. The list of documents that

17 are acceptable for Election Identification Certificates

18 is the same list of documents that we accept, we

19 currently accept for driver license and identification

20 cards, with the exception of documents that are only

21 available exclusively to noncitizens were removed. So

22 it's the same list.

23 Q. Okay. But there was no requirement that it

24 needed to be the same list, correct?

25 MR. McKENZIE: Objection, vague. You may

64

1 answer.

2 A. No, there was no specified requirement. From

3 an operational standpoint, it was important to be as

4 consistent as possible. And that list of documents has

5 been vetted and checked, and, you know, over the years.

6 Q. (By Ms. Maranzano) Is it fair to say that an

7 Election Identification Certificate has a different

8 purpose than a driver's license?

9 A. A driver license grants you the license to

10 drive, so yes.

11 Q. And is the reason for using these secondary

12 documents to obtain a driver's license basically the

13 same reason that you've laid out here in regards to the

14 EIC in terms of you think these documents -- or you made

15 some sort of assessment that these documents are less

16 likely to open the process up to fraud?

17 A. I think that would be a reasonable statement,

18 yes.

19 Q. And you think that's the reason that they are

20 used in particular for the driver's license applicants?

21 A. Uh-huh. Yes.

22 Q. What are -- you started to talk about this a

23 bit, but what are drivers' license staffers going to be

24 doing to verify that documents are actually legitimate?

25 A. Well, they go through the training, the

<p style="text-align: center;">65</p> <p>1 fraudulent document recognition training, and it's</p> <p>2 almost just a sense, you know, of hmm, the paper doesn't</p> <p>3 feel quite right. You know, I don't routinely do that</p> <p>4 as a process, so I haven't recognized a fraudulent</p> <p>5 document personally, but that's what I have heard folks</p> <p>6 say, that, you know, it may be something subtle about</p> <p>7 it.</p> <p>8 Q. Is that training something that's provided</p> <p>9 regularly through driver's license employees?</p> <p>10 A. It is typically provided to new employees and</p> <p>11 would be available if there were changes or</p> <p>12 modifications or something in a new document, then yes,</p> <p>13 there would be refreshing.</p> <p>14 Q. And is that training program something that's</p> <p>15 under your purview?</p> <p>16 A. Actually, the training is developed and</p> <p>17 provided, typically, through the American Association of</p> <p>18 Motor Vehicle Administrators, so that's a national</p> <p>19 association that develops this training.</p> <p>20 Q. Okay.</p> <p>21 A. And we access that through their website.</p> <p>22 Q. Okay. But do you oversee the training programs</p> <p>23 that are done for driver's license employees?</p> <p>24 A. Yes.</p> <p>25 Q. Is there any anti-discrimination training</p>	<p style="text-align: center;">67</p> <p>1 Q. (By Ms. Maranzano) Was there any concern that</p> <p>2 not expanding the list of secondary identification</p> <p>3 forms, as was requested by the League of Women Voters</p> <p>4 would result in eliminating the ability of some</p> <p>5 individuals to actually participate in the electoral</p> <p>6 system?</p> <p>7 A. I don't think that that was a conscious</p> <p>8 concern, no. We issue almost six million documents a</p> <p>9 year, people have to meet -- to people who meet those</p> <p>10 criteria, and so...</p> <p>11 Q. It's fair to say that you don't now issue an</p> <p>12 Election Identification Certificate, right, because that</p> <p>13 program hasn't been implemented yet?</p> <p>14 A. That's correct. We do not. But we do issue</p> <p>15 driver license and ID cards to the entire strata of the</p> <p>16 population.</p> <p>17 Q. But it's also true that the individuals who</p> <p>18 would be applying for an EIC wouldn't necessarily be</p> <p>19 individuals who don't have the documents that you're</p> <p>20 talking about, correct, a driver's license or an</p> <p>21 identification card?</p> <p>22 MR. McKENZIE: Objection, vague, but you</p> <p>23 may answer.</p> <p>24 A. Yes. That's the only way they could get an</p> <p>25 Election Identification Card.</p>
<p style="text-align: center;">66</p> <p>1 included for driver's license employees?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And is any part of that training about ensuring</p> <p>4 that employees would screen for fraud in an equitable</p> <p>5 manner?</p> <p>6 MR. McKENZIE: Objection, it's vague.</p> <p>7 A. I don't believe that that specific phrasing is</p> <p>8 in there, no.</p> <p>9 Q. (By Ms. Maranzano) Is that concept included?</p> <p>10 MR. McKENZIE: Same objection.</p> <p>11 A. I think that we are trying to provide the best</p> <p>12 possible customer services, in a nondiscriminatory</p> <p>13 manner, while complying with the rules and regulations</p> <p>14 and laws that govern our business. I believe those</p> <p>15 concepts are covered in the training that we provide to</p> <p>16 our employees.</p> <p>17 Q. (By Ms. Maranzano) When DPS created these rules</p> <p>18 for an EIC, was there an attempt to balance out ensuring</p> <p>19 that the card would be secure with ensuring that people</p> <p>20 could have access to the franchise?</p> <p>21 MR. McKENZIE: Objection, vague.</p> <p>22 A. I think we want to provide cards to everyone</p> <p>23 that qualifies, that can meet the requirements, you</p> <p>24 know. That's -- that's the goal. We don't -- we don't</p> <p>25 want to restrict them from anyone that qualifies.</p>	<p style="text-align: center;">68</p> <p>1 Q. (By Ms. Maranzano) And when these rules were</p> <p>2 being developed, were there any studies that were looked</p> <p>3 at or analysis that were looked in terms of how you</p> <p>4 might want to issue a -- implement a program like this,</p> <p>5 free identification for -- or identification free of</p> <p>6 charge for voting?</p> <p>7 A. No.</p> <p>8 Q. So there was no -- there were no studies in</p> <p>9 particular, then, about who might have birth</p> <p>10 certificates?</p> <p>11 A. No, not that I'm aware of.</p> <p>12 Q. Do you recall, during your testimony in front</p> <p>13 of the Committee of the Whole, that issue coming up?</p> <p>14 MR. McKENZIE: Same scope objection.</p> <p>15 A. Well, my focus during the development of the</p> <p>16 rules and during the testimony was on issues related to</p> <p>17 the driver license function and process. Our role in</p> <p>18 this is to issue the document, and the Secretary of</p> <p>19 State is more about the voting requirements and...</p> <p>20 Q. (By Ms. Maranzano) Okay. What I'm referring</p> <p>21 to, just to be clear, is about the issuance of the EIC</p> <p>22 and the requirements for the underlying documentation</p> <p>23 that an individual would have to show in order to get an</p> <p>24 EIC. And one of those documents is a birth certificate,</p> <p>25 and that's one of the secondary forms of identification;</p>

69

1 is that correct?

2 A. Yes.

3 Q. And I'm wondering if any legislators, to the  
4 best of your recollection, raised concerns during your  
5 testimony to the Committee of the Whole about  
6 individuals' access to birth certificates?

7 MR. McKENZIE: And it's the same scope  
8 objection.

9 A. I can't say that I recall a specific question  
10 that was asked about that.

11 Q. (By Ms. Maranzano) Did DPS look into what steps  
12 a person needed to take to get a certified copy of a  
13 birth certificate?

14 A. I don't -- we didn't do any specific  
15 investigation of that. I think, you know, there's --  
16 there's a certain level of familiarity that you have to  
17 go to the county, or that kind of thing, to go get that  
18 document.

19 Q. So there was no --

20 A. I'm not familiar with all the details.

21 Q. Okay. And there was no specific research  
22 conducted for developing this rule that we're looking at  
23 about the EIC use; is that correct?

24 MR. McKENZIE: Objection, vague, but you  
25 can answer.

70

1 A. We worked with the Secretary of State, but  
2 beyond that, I don't believe that we did any specific  
3 research.

4 Q. (By Ms. Maranzano) Do you have any knowledge of  
5 was it discussed at DPS, whether or not it might have  
6 been a common practice for any groups or communities or  
7 populations in Texas to have been born outside of  
8 hospitals?

9 A. Do I have any specific knowledge that there are  
10 groups to have been born outside of hospitals?

11 Q. Right. And I'm asking particularly about not  
12 necessarily your personal knowledge, but the knowledge  
13 that was considered when you were developing this rule.

14 A. Yes. There are people that do not have a birth  
15 certificate and they may have been born at a point years  
16 ago.

17 Q. And you think people who are born more recently  
18 probably -- am I understanding you correctly that your  
19 testimony is that you think that people who might not  
20 have access to birth certificates are people who are  
21 born years ago?

22 A. Those are the examples that I've heard --

23 Q. Okay.

24 A. -- anecdotally in the course of my two years at  
25 DPS.

71

1 Q. And was that something that was -- that was at  
2 all evaluated when you were considering what to use as a  
3 secondary form of identification?

4 MR. McKENZIE: Objection, vague, but you  
5 may answer.

6 A. I think it's the same kind of thing, that  
7 because these identity requirements for the EICs were so  
8 similar to the driver license and ID requirements, that  
9 any exceptions that would come up, we've already dealt  
10 with in the driver license and ID arena, and so we would  
11 handle them similarly.

12 Q. (By Ms. Maranzano) Okay. Can we look back at  
13 15.182. And if you look towards the end of that rule,  
14 there's a provision that says, "Any document that may be  
15 added to 15.24 of this title, other than those issued to  
16 persons who are not citizens of the U.S.," can you tell  
17 me what that provision means?

18 A. The 15.24 is the identity documents for driver  
19 license and ID, so what we wanted to do is be able to  
20 keep the list in sync without always having to come back  
21 and modify this list. And so that particular phrase is  
22 in there to do just that, such that if we add another  
23 document to the list that's acceptable for driver  
24 license, those folks seeking an Election Identification  
25 Certificate are also able to use that document.

72

1 Q. I see. So in terms of that last phrase, "Other  
2 than those issued to persons who are not citizens of the  
3 U.S.," would that include documents that are issued to  
4 persons who are not citizens of the U.S. and also issued  
5 to persons who are citizens of the U.S.?

6 A. I think that last portion of that phrase is  
7 intended to say, if we added a document that was only  
8 available to noncitizens, that that would not  
9 necessarily put it on this list, because you have to be  
10 at citizen to be able to vote.

11 Q. Okay. That's actually not exactly what it  
12 says, though, correct? Am I right that it doesn't say  
13 that it would be any document that would be issued only  
14 to noncitizens?

15 A. It does not have the word "only" in it.

16 Q. But it's your understanding that that was the  
17 intention?

18 A. (Witness nods head yes.)

19 Q. Okay.

20 MS. MARANZANO: Can we have this marked?  
21 (Exhibit 834 marked for identification.)

22 Q. (By Ms. Maranzano) Okay. I'm showing you what  
23 we've marked as Deposition Exhibit 834. If you can take  
24 a look at that and let me know if it looks familiar to  
25 you?

73

1 A. Yes.  
 2 Q. And what is this document?  
 3 A. I believe this is part of the training  
 4 documents --  
 5 Q. Okay.  
 6 A. -- that we gave to our employees to help them  
 7 understand. I think, yeah.  
 8 Q. Is this an official DPS document?  
 9 A. Yes. I'm assuming that an official DPS  
 10 document means that it was produced by DPS or used by  
 11 DPS employees.  
 12 Q. So it was -- it as -- it was produced for  
 13 training for employees; is that correct?  
 14 A. Uh-huh.  
 15 Q. And can you look on the first page underneath,  
 16 "How does a person apply for a Texas election  
 17 certificate?"  
 18 A. Uh-huh.  
 19 Q. The second -- the second bullet there says,  
 20 "Bring document to verify U.S. citizenship?"  
 21 A. Uh-huh.  
 22 Q. Is that -- is that requirement separate from  
 23 what's listed in the rules, the documents that are the  
 24 primary, secondary or supporting documents that are  
 25 required by the rules?

74

1 A. I think that it's really -- it's a callout of  
 2 something, that if you were to bring some combination of  
 3 -- I mean, I don't really see how you can bring a --  
 4 because you have to have a secondary document. But you  
 5 could conceivably have a secondary document that showed  
 6 gender or name change that might not show citizenship.  
 7 So in that case, you would need to have something that  
 8 showed citizenship as well.  
 9 Q. So in terms of the secondary documents, the one  
 10 that you mentioned, is that the only one that doesn't  
 11 automatically show citizenship?  
 12 A. That's my recollection, yes.  
 13 Q. And so if you bring that document and two  
 14 supporting documents, but the supporting documents don't  
 15 establish citizenship, you have to bring another form of  
 16 identification that would establish your citizenship?  
 17 A. Yes.  
 18 Q. And is there any reason that that's not written  
 19 into the rule itself on the EICs?  
 20 A. I think that's -- no, I can't think of a reason  
 21 why that was there. I think it's just kind of  
 22 understood, almost.  
 23 Q. Are you -- are you aware of whether a voter  
 24 registration applicant already has to attest to their  
 25 citizenship when they register to vote?

75

1 A. No, I'm not aware.  
 2 Q. So it's your understanding that prior to  
 3 issuing an EIC, DPS will need have some documentation  
 4 that person is a citizen?  
 5 A. Yes, that's what it says.  
 6 Q. And was that a requirement that DPS understood  
 7 was required by SB 14 or that DPS developed itself?  
 8 A. We would not have imposed any additional  
 9 requirements other than what was required either by  
 10 statute or by Secretary of State requirements. DPS  
 11 wouldn't have established any additional requirements.  
 12 Q. Okay. So when we looked at SB 14, did you see  
 13 any requirement in SB 14 that -- that an applicant for  
 14 Election Identification Certificate would have to show  
 15 documentation to verify citizenship?  
 16 A. I don't remember the entire -- well, it does  
 17 say -- on Page 10 of Exhibit 5, it says, "A United  
 18 States citizenship certificate." So the implication is  
 19 that citizenship is required.  
 20 Q. And are you looking at -- I'm sorry -- Page 10?  
 21 A. Page 10 of Exhibit 5.  
 22 Q. And so that is -- you're referring to one of  
 23 the forms of identification that would be required by  
 24 SB 14. But in terms of what is specified in the law for  
 25 an EIC, is there any requirement that a person needs to

76

1 independently show documentation that establishes  
 2 citizenship?  
 3 A. I don't see an independent requirement.  
 4 Q. So I guess I'm just wondering where -- where  
 5 did this requirement come from, who inserted this into  
 6 -- into your documents or who decided that this  
 7 requirement was necessary?  
 8 A. I was not involved in the negotiation of the  
 9 details of this. My guess is that it was -- it came  
 10 from a requirement of the Secretary of State that you  
 11 have to be a U.S. citizen to vote.  
 12 Q. Okay. So you think the Secretary of State  
 13 probably requested that this be a requirement to obtain  
 14 an EIC?  
 15 A. That's speculation on my part, but that would  
 16 be the requirement. That would be my guess.  
 17 Q. Isn't it fair to say that if a voter  
 18 registration applicant is attesting to their citizenship  
 19 on an application, that requiring them to bring  
 20 documentation of their citizenship is duplicative?  
 21 A. I think verification is required in many  
 22 instances to prove something.  
 23 Q. Do you think that an attestation is not a  
 24 sufficient verification?  
 25 A. There are some things where there's

77

1 documentation that's readily available, that's available  
2 to be able to verify. We do allow attestation for some  
3 things.

4 Q. And is it fair to say that some people who are  
5 U.S. citizens may very well not have documentation  
6 readily available that would prove their citizenship?

7 MR. McKENZIE: Objection, speculation.

8 A. I can't speak to that. I don't know.

9 Q. (By Ms. Maranzano) And in terms of the  
10 documentation that is written into the rule for an  
11 Election Identification Certificate, a person is already  
12 required -- I think per your testimony, a person is  
13 already required to show one form of documentation that  
14 establishes citizenship. I think -- I think you said  
15 that if they did not -- if they had the secondary form  
16 of ID, that that doesn't establish citizenship. They  
17 would need to bring one of these other forms of ID that  
18 do; is that correct?

19 A. Yes.

20 Q. And so if they did that, there would not be any  
21 additional requirement; is that correct?

22 A. That's correct.

23 Q. And just to be clear, you testified you don't  
24 know why it's not specified in the rule that there has  
25 to be some sort of verification of citizenship?

78

1 A. I don't.

2 Q. Can you turn back to the rule for me. And can  
3 you look at part 15.183? And I'd like to direct your  
4 attention to Section A, subsection 1, subsection little  
5 A, which says --

6 A. I'm sorry. You said A 1 little --

7 Q. I'm sorry. A1, big A. It's on the top of the  
8 first full page on this rule. And it says, "No name  
9 will be used that has not been documented."

10 A. Uh-huh.

11 Q. Is that -- isn't it essentially saying that a  
12 person needs to use the name that's on their underlying  
13 documentation that they bring in?

14 A. Yes.

15 Q. And what if they have two forms of  
16 documentation that have variations of the same name,  
17 Thomas and Tom, or something like that; what name would  
18 be used?

19 A. The conflict has to be resolved, you know. It  
20 depends on the combination of the documents. I mean,  
21 it's meant primarily that you can't go by "Skip" if your  
22 name is, you know, Robert Earl Smith.

23 Q. Okay. So there would be some decision made as  
24 to what name to put on the EIC based on which name  
25 showed up on which document?

79

1 A. Well, I mean, you can't use Skip, if that's  
2 what everybody calls you and that's -- and you don't  
3 like Robert Earl.

4 Q. Uh-huh. What if somebody says to you that they  
5 registered -- their voter registration application used  
6 the name Skip, because that was their -- the name  
7 everybody calls them, but their actual name on their  
8 documentation is Robert. Would they still need to have  
9 an EIC that said Robert?

10 A. Yes. That would be the document, the name that  
11 we would issue the document under. I don't have any  
12 knowledge of the Secretary of State and what rules they  
13 use for naming.

14 Q. Okay. So there was any concern at DPS that a  
15 practice like that might lead to significant poll worker  
16 confusion if somebody shows up with a document that says  
17 Skip or says Robert, when their name on the voter  
18 registration list is Skip?

19 A. The implementation of the rules, the use of the  
20 cards at the polling place is not DPS's issue. I  
21 believe that there was discussion about that with the  
22 Secretary of State and their folks, but that's not a  
23 Department of Public Safety issue.

24 Q. Okay. So that wasn't -- even though you were  
25 issuing rules for an identification that would be used

80

1 solely for voting, DPS did not consider it necessary to  
2 think about what would happen when the voter showed up  
3 at the polls and tried to use that ID?

4 A. No, that wasn't exactly what I meant.

5 Q. Okay.

6 A. It was that we have standards that we issue  
7 documents under, and we have rules that are consistent  
8 with the driver license and the ID card rules. How  
9 those are implemented and deconflicted at the polling  
10 place is not a DPS issue.

11 Q. Okay.

12 A. And the Secretary of State was aware of our  
13 rules and what we were going to do.

14 Q. And can you look at capital letter B on that  
15 same page, and it says, "Foreign language names will be  
16 spelled out as they appear on the identification  
17 documents presented. English versions of names will not  
18 be substituted for the actual name." And I have similar  
19 question about -- about this. What if somebody told you  
20 that they had registered to vote with the English  
21 version of their name, would they still need to use the  
22 foreign version of their name on the identification  
23 document?

24 A. Yes, my answer is the same.

25 Q. And you said you're not aware of the Secretary



81

1 of State's rules in regard to how individuals who have  
 2 identification with a name that doesn't match the  
 3 polling -- the name on the registration list, how those  
 4 individuals would be handled?  
 5 A. I don't know the details of that, no.  
 6 Q. Returning to Section A, do you see the line  
 7 that says, "Three full names will be used unless the  
 8 applicant does not have three names, including the  
 9 maiden name." Are you -- oh, and then also, the first  
 10 sentence says, "A married woman may use her maiden name  
 11 or she may adopt the surname of her husband or the  
 12 surname of a previous husband." Are you --  
 13 MR. McKENZIE: Objection, compound. I'm  
 14 sorry.  
 15 MS. MARANZANO: Oh, I'm sorry.  
 16 Q. (By Ms. Maranzano) I was just trying to read  
 17 into the record what the rule states. Is that correct?  
 18 Have I read that correctly?  
 19 A. Yes.  
 20 Q. Thank you. Are you aware that, in the Spanish  
 21 culture, there's a tradition to keep a surname from both  
 22 the mother's side and the father's side of the family?  
 23 A. I've heard that.  
 24 Q. So would a person who came from that tradition  
 25 possibly have four names?

82

1 MR. McKENZIE: Objection, speculation.  
 2 But you may answer.  
 3 A. I've heard such.  
 4 Q. (By Ms. Maranzano) Okay. And how would that  
 5 person be -- how would an application for an EIC from a  
 6 person with four names be -- be handled?  
 7 A. The same way as an applicant for a driver  
 8 license or an identification card with four names would  
 9 be handled.  
 10 Q. And what is that?  
 11 A. To be perfectly honest, I don't know. I have  
 12 never processed an applicant with four names.  
 13 Q. So there's no -- is there a DPS policy on that  
 14 issue?  
 15 A. I don't know.  
 16 Q. Is there any reason that the rule specifies  
 17 three full names will be used?  
 18 A. I think what these rules are trying to do is  
 19 achieve consistency, and this actually is an excerpt  
 20 from the rules. If I'm remembering correctly, this  
 21 portion is an excerpt from the rules that are about the  
 22 driver license and the identification card. And so it's  
 23 about consistency and it's like, well, Robert Earl Smith  
 24 may not like Earl, and he doesn't want to use it, but  
 25 yet that's his legal name, and this is specifying that

83

1 he has Robert Earl Smith on his primary, secondary, or  
 2 supporting documents, that that is the name that needs  
 3 to be in the record.  
 4 Q. But isn't it -- isn't it true that an EIC  
 5 actually is very different from a driver's license in  
 6 that it's an identification that needs to be matched? I  
 7 mean, by the very nature of it being an ID solely for  
 8 voting, it's going to be need to be matched against a  
 9 list when a person tries to vote; isn't that correct?  
 10 A. That makes sense, yes.  
 11 Q. And so I guess what I'm having a hard time  
 12 figuring out is: Why didn't DPS try to tailor some of  
 13 these regulations to meet the -- the specific purpose  
 14 that the EIC was being used for?  
 15 A. I think that we really tried to remain  
 16 consistent to the process. The Department of Public  
 17 Safety was designated by the legislature as the entity  
 18 to issue these identification cards, and so we assumed  
 19 that there was some trust in the processes that we used  
 20 to be able to do them. There was a desire to not  
 21 replicate, you know, government processes. And so we  
 22 used them consistently. And the Secretary of State was  
 23 aware of these, all of these requirements and rules.  
 24 And so if there were things that needed to be done to  
 25 accommodate something at the polling place, that could

84

1 be done, I believe they also did rules.  
 2 Q. You believe they what?  
 3 A. They also did rules.  
 4 Q. And can you look down the page on that same  
 5 page that we're looking at, where under C, number 3, it  
 6 talks about fingerprints are required to get an Election  
 7 Identification Certificate?  
 8 A. Uh-huh.  
 9 Q. Can you tell me why applicants for an EIC need  
 10 to be fingerprinted?  
 11 A. It's part of the same process --  
 12 Q. What --  
 13 A. -- applicants for a driver license or  
 14 identification cards are processed, and it goes through  
 15 the same technology system.  
 16 Q. Okay. What -- what technology system is that?  
 17 You mean how a person gets fingerprinted it's the same  
 18 technology system?  
 19 A. It's -- it's part of the same equipment setup.  
 20 Q. Okay. What does DPS do with that information?  
 21 A. Nothing.  
 22 Q. Is there any concern that fingerprinting  
 23 applicants might be intimidated?  
 24 A. No. It's a routine part of the process to get  
 25 a driver license or an identification card in Texas.

<p style="text-align: center;">85</p> <p>1 Q. Can you look on next page for me? Under</p> <p>2 notarizations, it says, Section D, "Authorized employees</p> <p>3 of the Department of Public Safety." Are driver's</p> <p>4 license employees authorized notaries?</p> <p>5 A. The employees in the field are, yes, ma'am.</p> <p>6 Q. So a person who was at a driver's license</p> <p>7 office to get an EIC could have it notarized right there</p> <p>8 in the office; is that correct?</p> <p>9 A. By the person taking their application, yes,</p> <p>10 ma'am.</p> <p>11 Q. Is there a requirement that a first-time</p> <p>12 applicant for an EIC appear in person?</p> <p>13 A. Yes.</p> <p>14 Q. And is that written into the rules somewhere?</p> <p>15 A. I think it says you have to go to a driver</p> <p>16 license office, if I remember correctly. I'm not sure</p> <p>17 if it's in the rules. I know I've read that somewhere</p> <p>18 that it's -- that is the, you know, part of the steps,</p> <p>19 part of the procedures.</p> <p>20 Q. Is there any reason that wasn't included in the</p> <p>21 rule itself?</p> <p>22 MR. McKENZIE: Objection, no foundation,</p> <p>23 but you may answer.</p> <p>24 Q. (By Ms. Maranzano) Well, do you see it in</p> <p>25 rules?</p>	<p style="text-align: center;">87</p> <p>1 look at rule -- yeah, Rule 15.184. But is a person able</p> <p>2 to renew an EIC in other ways other than showing up in</p> <p>3 person?</p> <p>4 A. Yes. 15.184-B3 says, "The Department may</p> <p>5 provide certificate holders with alternate means of</p> <p>6 renewing or duplicating an Election Identification</p> <p>7 Certificate."</p> <p>8 Q. And has the Department provided such alternate</p> <p>9 means?</p> <p>10 A. Well, we haven't yet, because we haven't issued</p> <p>11 an Election Identification Certificate.</p> <p>12 Q. Fair point. Does the Department intend to</p> <p>13 provide alternate means?</p> <p>14 A. We specifically set aside that requirement so</p> <p>15 that we could provide alternate means. I mean, you</p> <p>16 know, that's specifically spelled out in here so that we</p> <p>17 could do that.</p> <p>18 Q. Uh-huh. So I guess what I'm wondering is: If</p> <p>19 this -- if this were to implemented this fall, are you</p> <p>20 -- and obviously, it would be new, so you wouldn't have</p> <p>21 anybody applying for renewal right way, but is the</p> <p>22 plan --</p> <p>23 A. It's a six-year certificate.</p> <p>24 Q. Is the plan to allow people to renew in -- in</p> <p>25 ways other than in person, or is that just an option</p>
<p style="text-align: center;">86</p> <p>1 A. I'm -- I'm not seeing it right now. Like I</p> <p>2 said, I know I've seen it somewhere. I'm not sure if</p> <p>3 it's in the rules or not. I don't think that there was</p> <p>4 a specific reason for that. These rules were patterned</p> <p>5 after the rules for the driver license and</p> <p>6 identification cards, and it probably was not spelled</p> <p>7 out in there either.</p> <p>8 Q. And why is it necessary that a person show up</p> <p>9 in person on their first -- the first time they're</p> <p>10 applying for an EIC?</p> <p>11 A. We currently don't have technology that allows</p> <p>12 us to accept pictures or fingerprints or that kind of</p> <p>13 thing that's submitted, and there's a need to see the</p> <p>14 documents.</p> <p>15 Q. So if the documents were mailed in, that would</p> <p>16 not be sufficient?</p> <p>17 A. It needs to come as a package, and that's --</p> <p>18 that's the only way that we have it. We don't have any</p> <p>19 procedures set up to accept mailed-in documents or</p> <p>20 electronically-transmitted documents for the EIC, driver</p> <p>21 license, or original identification card applications.</p> <p>22 Q. And that's for an original applications; is</p> <p>23 that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And is a person able to -- and we can -- we can</p>	<p style="text-align: center;">88</p> <p>1 that you're keeping open?</p> <p>2 A. That would be the hope, that they would be able</p> <p>3 to renew in the same ways that you could renew a driver</p> <p>4 license or an identification card.</p> <p>5 Q. And what are those?</p> <p>6 A. You can renew online. You can renew via mail</p> <p>7 or by phone.</p> <p>8 Q. And so as of now, you would say it's a hope</p> <p>9 that you can provide that to EIC applicants?</p> <p>10 A. It's speculation that we would be able to at</p> <p>11 this point in time, but it is a hope.</p> <p>12 Q. Okay. And is it your understanding that EICs</p> <p>13 will be renewed free of charge?</p> <p>14 A. Yes.</p> <p>15 Q. Is there a reason that wasn't written into the</p> <p>16 rule?</p> <p>17 A. I thought it was. No, there's no reason. But</p> <p>18 I was thinking that it was.</p> <p>19 Q. But it's your understanding that they will be</p> <p>20 issued free of charge?</p> <p>21 A. Yes.</p> <p>22 Q. And duplicates --</p> <p>23 A. Yes.</p> <p>24 Q. -- I believe is written into the law as free of</p> <p>25 charge --</p>

89

1 A. Yes.  
 2 Q. -- is that correct?  
 3 A. Actually, that is the reason. It's written  
 4 into the law, and we tried not to duplicate all the  
 5 details in the law that was clear and didn't need any  
 6 clarification.  
 7 Q. You think the renewals is written into the law  
 8 or duplicates?  
 9 A. I think it says you can't charge for an  
 10 Election Identification Certificate.  
 11 Q. And you took that to mean any version?  
 12 A. (Witness nods head yes.)  
 13 Q. Okay. And for Rule 15.185, "The Department may  
 14 cancel and require surrender of an Election  
 15 Identification Certificate upon confirmation that the  
 16 certificate was issued to a person not entitled  
 17 thereto." How would the Department confirm that an  
 18 Election Identification Certificate had been issued to a  
 19 person who wasn't entitled to it?  
 20 A. I think it could come from a variety of  
 21 sources. And, you know, General Counsel, whoever  
 22 brought the documents or this -- the -- the allegations,  
 23 and they would have to -- they'd have to just go through  
 24 it. We haven't -- I mean, we haven't issued any, so I  
 25 can't give you a specific example of this is what we did

90

1 or how we did it or anything like that.  
 2 Q. Has there been any process mapped out for what  
 3 that -- what that would look like?  
 4 A. Not that I'm aware of.  
 5 Q. And what about the process for -- the process  
 6 for requiring surrender; do you know what that would  
 7 look like?  
 8 A. I think those were in there as protective, not  
 9 -- not that we anticipated using them, but that just in  
 10 case there was an example that came up.  
 11 Q. If a person obtains an EIC and the EIC  
 12 expires, would that person have to apply again as a new  
 13 applicant?  
 14 A. It's probably they would follow the same kind  
 15 of standard as we do for driver license and  
 16 identification cards.  
 17 Q. And what's that standard?  
 18 A. That if it's within a certain time frame, then  
 19 they -- they're just treated as a renewal.  
 20 Q. And is that time frame two years? Is that  
 21 correct?  
 22 A. Yeah, that's probably...  
 23 Q. That's probably correct?  
 24 A. Yes.  
 25 Q. Okay.

91

1 A. The intention is not to make this hard. It's  
 2 to follow certain standards that preserve the integrity.  
 3 Q. The intention is to not make getting an EIC --  
 4 A. To not make it -- right. Just like we don't  
 5 want to make getting a driver license or an  
 6 identification card hard.  
 7 Q. Well, to that end, did you -- did you look at  
 8 forms of identification that you were requiring people  
 9 to show with any eye towards not making it hard for  
 10 applicants?  
 11 A. Not making it hard within certain standards.  
 12 If I gave them away like candy, it's not a good thing.  
 13 Q. Is it -- is it true -- I believe this is in the  
 14 statute. You can look back at the statute -- that a  
 15 person who is age 70 who obtains an EIC would get an EIC  
 16 that doesn't have an expiration date?  
 17 A. That's correct, I believe.  
 18 Q. Would DPS require such a person to show some  
 19 verification of their age?  
 20 A. You would have their age, their date of birth  
 21 in the system for application.  
 22 Q. You would have it from the actual application  
 23 that they filled out.  
 24 A. Uh-huh.  
 25 Q. And would there need to be any documentation?

92

1 A. So it -- not -- like if you got it when you  
 2 were 68, or, you know, if you were -- we have to have  
 3 your date of birth.  
 4 Q. Right. I guess what I'm wondering is: You  
 5 know, if that's the person who isn't showing the birth  
 6 certificate when they show up, they're using a different  
 7 form of secondary ID, can they just tell you that  
 8 they're over 70? Do you need some documentation? How  
 9 are you planning to implement that provision?  
 10 A. I think the standard routine procedures would  
 11 be followed.  
 12 Q. And what are those?  
 13 A. They would have to -- I'm sorry to say that's a  
 14 harder question for me to answer than it should be  
 15 because I don't issue these on a regular basis, so it's  
 16 not that I can run through the process in my head.  
 17 Q. Yeah, I understand. Do you have a sense of  
 18 what that process is?  
 19 A. I've never heard that there is an issue about  
 20 that at all. I mean...  
 21 Q. Is it generally your understanding that if an  
 22 applicant would tell you that they were a certain age,  
 23 you wouldn't need documentation?  
 24 A. Well, they have to have some form of documents  
 25 that verify and identify them, and those would probably

93

1 contain some information about their age.

2 Q. Okay.

3 A. And then they do routinely give us, okay,

4 what's your birth date. Okay. That's part of the  
5 application form, and they are attesting to that.

6 Q. Uh-huh. But as you sit here today, you're not  
7 aware of whether if they showed up with some combination  
8 of the documents that's required that don't verify their  
9 age, whether you would require any additional  
10 documentation?

11 A. You know, I remember now, it's on the -- it's  
12 on the application form, and they are signing it, and  
13 attesting it, and it's being notarized, too, so that's  
14 fine.

15 Q. Okay. If a person who has an EIC wants to  
16 obtain a driver's license or ID card, would they need to  
17 surrender their EIC?

18 A. No.

19 Q. And would DPS know -- if such a person went to  
20 apply for a driver's license, would DPS be running a  
21 check to see if they had an EIC also?

22 A. No, I don't believe so. It works the other  
23 way, that you can have -- you could have gotten an  
24 Election Identification Certificate and decided that  
25 want a driver license or an ID card.

94

1 Q. So we've -- we've talked -- we've talked a lot  
2 today about, sort of, the security measures in terms of  
3 obtaining an EIC. Is DPS taking any precautions with  
4 regard to the actual card, to try to make it a difficult  
5 card to -- to replicate in an authentic manner?

6 A. There are certain security provisions in the  
7 card, I believe.

8 Q. Do you know what those are?

9 A. I do not, no, recall the specifics.

10 Q. Can you take a look at the -- I have it here --  
11 the document we've marked as exhibit -- as Exhibit 834?

12 A. Uh-huh.

13 Q. And on the second page, you see there are some  
14 photos there. Is this -- this is --

15 A. This document doesn't actually have photos.

16 Q. Oh. Hmm.

17 MR. McKENZIE: Neither does mine.

18 MS. MARANZANO: Hmm. Let's go off the  
19 record for a second. It looks like we have different  
20 documents.

21 (Recess from 2:13 p.m. to 2:32 p.m.)

22 MS. MARANZANO: Back on the record.

23 Q. (By Ms. Maranzano) Okay. Before we took a  
24 break, we were looking at what we are marking as  
25 Deposition Exhibit 834.

95

1 And for the record, I have switched the  
2 exhibits so that we all have the same one now.

3 And we are looking at Page 2, which has a  
4 picture of a model Election Identification  
5 Certificate. Is this your understanding of what -- at  
6 the present time, what the plan is for the Election  
7 Identification Certificate to look like?

8 A. Yes.

9 Q. And are there any -- I see there's a picture of  
10 the back of the card that has a bar and like a bar  
11 code. Is that -- what's the purpose of that?

12 A. It contains the information that's on the  
13 front.

14 Q. Okay. Is the idea that it can be scanned?

15 A. Yes, it can be scanned.

16 Q. And will there be any equipment for scanning at  
17 polling places?

18 A. I have no idea.

19 Q. Is there a reason that y'all put this on the  
20 back of the card?

21 A. It comes routinely on the cards that we  
22 produce.

23 Q. Are there any security features -- well, what  
24 security features exist on a driver's license?

25 A. There's a whole host.

96

1 Q. Okay. Is an EIC going to have any of those  
2 security features that exist on a driver's license?

3 A. Yes, it will have some.

4 Q. And which ones?

5 A. Well, you can see that there is a water mark on  
6 the picture, or partially on the picture. That's one of  
7 the examples of security features.

8 Q. Anything else?

9 A. You can also see the stars down below.

10 Q. I see those. And what are those stars for?

11 A. They're part of the security features.

12 Q. Okay. Anything else?

13 A. Those are the -- the most apparent. I don't  
14 know all the detail of the security features. I try not  
15 to know them all, so then I can't reveal them.

16 Q. Okay.

17 A. They told me that if I did, I would be in big  
18 trouble, so I never bothered to learn them.

19 Q. Okay. So those are the -- as you sit here  
20 today, those are the ones that you're familiar with?

21 A. Yes.

22 Q. Do you know if there's any images on the EIC  
23 that will be visible only under a black light?

24 A. I'm not aware of all the details of the  
25 security features.

97

1 Q. Okay. Is the card going to be laminated?  
 2 A. It's not really -- it's not really a laminated  
 3 process. It's not based on a piece of paper.  
 4 Q. Okay. Oh, is it a plastic card?  
 5 A. (Witness nods head yes.)  
 6 Q. Okay. And is this image below the current  
 7 design -- and it's a little hard to read -- the current  
 8 design for a temporary Texas Election Identification  
 9 Certificate?  
 10 A. Yes.  
 11 Q. And because it's a little difficult to read, do  
 12 you know what information will be contained on that  
 13 document?  
 14 A. Well, it's got the applicant's picture, their  
 15 name. It says on it for an election purposes only, that  
 16 it can't be used for identification. I don't remember  
 17 all of the -- all the pieces of information.  
 18 Q. And it looks to me like, at least on the  
 19 nontemporary election certificate, there is no address.  
 20 Is that your understanding?  
 21 A. That's correct.  
 22 Q. So if an individual moved, they wouldn't have  
 23 to get a new --  
 24 A. That's correct.  
 25 Q. -- certificate? Okay.

98

1 Is there a signature included on the  
 2 election certificate?  
 3 A. Not on the card itself.  
 4 Q. Is it included somewhere else? I'm not  
 5 understanding. What do you mean, not on the card  
 6 itself?  
 7 A. There is not a signature on the card. The  
 8 applicant signs the temporary election certificate  
 9 verifying that they have looked it over and that the  
 10 information is correct.  
 11 Q. Okay. And is there a reason that you're not  
 12 just issuing the temporary election certificate as the  
 13 official document?  
 14 A. It's only a piece of paper. It's just an  
 15 eight-and-a-half-by-eleven piece of paper, a temporary.  
 16 Q. Okay. So is the reason you want the plastic  
 17 certificate for security?  
 18 A. Well, it's a six-year document.  
 19 Q. So you think it will last longer?  
 20 A. Yes, ma'am.  
 21 Q. Okay.  
 22 MS. MARANZANO: Please marks this as 835.  
 23 (Exhibit 835 marked for identification.)  
 24 Q. (By Ms. Maranzano) I'm showing you what we're  
 25 marking as Deposition Exhibit 835. Can you take a look

99

1 at it and let me know if you've seen this e-mail chain  
 2 before.  
 3 A. Yes.  
 4 Q. You have seen it before?  
 5 A. (Witness nods head yes.)  
 6 Q. And can you -- and are you included on this  
 7 e-mail chain?  
 8 A. Yes.  
 9 Q. Can you look at the e-mail that's in the middle  
 10 that comes from Ms. Mastracchio?  
 11 A. Mastracchio.  
 12 Q. Thank you. And she's responding to a question  
 13 that says, "What are the security features on it?" And  
 14 she said, "Currently none, especially if we need to keep  
 15 the cost down, which we do." Is this -- was this  
 16 changed since the e-mail exchange?  
 17 A. I believe so. This e-mail exchange was in  
 18 August, and the card, the final design of the card  
 19 probably wasn't done until months after that.  
 20 Q. So it's your testimony today that there are  
 21 security features on the card?  
 22 A. I believe there are security features. The  
 23 seal that I pointed out --  
 24 Q. Uh-huh.  
 25 A. -- that overlaps the picture and the card

100

1 itself on --  
 2 Q. Yeah.  
 3 A. -- this picture, that's actually, as my  
 4 understanding is, a security feature.  
 5 Q. Okay.  
 6 A. The fact that it overlaps both.  
 7 Q. Okay. And for the record, you're talking about  
 8 the picture that's on the page that's marked 2 in this  
 9 document, and it's a -- it's a seal that overlaps a  
 10 photograph and the nonphoto part of the ID; is that  
 11 correct?  
 12 A. Yes, and it's on document 834, Exhibit 834.  
 13 Q. And do you see in the e-mail exchange there is  
 14 a -- there's some comments about trying to keep the cost  
 15 down and sort of the balance between making the card  
 16 secure and trying to keep the cost down. Wouldn't you  
 17 say that it was similarly a goal of DPS to keep the  
 18 costs down in issuing EICs?  
 19 A. We always try and be good stewards of state  
 20 resources.  
 21 Q. So is that a yes?  
 22 A. Yes.  
 23 Q. Okay. If we can turn back the document that we  
 24 were looking at, Deposition Exhibit 834. If you can  
 25 look at Page 4 of that document. I'd like to direct



<p style="text-align: center;">101</p> <p>1 your attention to Question 4 on Page 4 that says, "What</p> <p>2 if the person tells you they do not have money to pay</p> <p>3 for an identification or a driver's license? Can we</p> <p>4 inform them of the election certificate?" Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. And the answer below is "No." Is that still</p> <p>8 the policy of DPS?</p> <p>9 MR. McKENZIE: Objection, no foundation.</p> <p>10 You may answer.</p> <p>11 A. Well, that's the stated procedure in the</p> <p>12 training document. Yes.</p> <p>13 Q. (By Ms. Maranzano) And is that still the</p> <p>14 procedure that you will be advising employees?</p> <p>15 A. Yes.</p> <p>16 Q. And why is that?</p> <p>17 A. There might be people that would come in that</p> <p>18 would just try and get a free ID. It says on the card</p> <p>19 that lots of people like free things, and it says that</p> <p>20 it can't be used for identification purposes; that it's</p> <p>21 only for voting purposes, but that wouldn't necessarily</p> <p>22 stop people from wanting to get it.</p> <p>23 Q. You think that the explicit statement on the</p> <p>24 card "for voting only" would not stop people from trying</p> <p>25 to get it for other purposes?</p>	<p style="text-align: center;">103</p> <p>1 Q. And so is DPS going to do any notices</p> <p>2 themselves?</p> <p>3 A. I'm not responsible for the communication plans</p> <p>4 of DPS, so I can't -- I can't respond to that</p> <p>5 specifically. There has been a change in the persons</p> <p>6 responsible for that lately.</p> <p>7 Q. Okay. So is it fair to say, as you sit here</p> <p>8 today, you haven't had any communications about putting</p> <p>9 up any signs or notices about this identification,</p> <p>10 should it be implemented; is that correct?</p> <p>11 A. I don't know what the current plans would be.</p> <p>12 Q. Okay.</p> <p>13 A. I have not spoken with the current</p> <p>14 communication director.</p> <p>15 Q. And can you look at Question Number 3, which</p> <p>16 talks about -- the question is, "If a person has lost</p> <p>17 their unexpired driver's license or identification card,</p> <p>18 are they eligible to apply for an election</p> <p>19 certificate?" And the answer is "No." Is that still</p> <p>20 the policy of DPS?</p> <p>21 A. Yes. That still follows the statute and the</p> <p>22 rules.</p> <p>23 Q. And is that person who -- if that person in</p> <p>24 this scenario lost -- lost their driver's license or</p> <p>25 identification card but was not able to afford a new</p>
<p style="text-align: center;">102</p> <p>1 A. I think people like free things.</p> <p>2 Q. Could it be used for anything other than</p> <p>3 voting?</p> <p>4 A. It -- it says not, but I don't govern what</p> <p>5 other -- how other entities choose to use it.</p> <p>6 Q. Is there any concern that by telling employees</p> <p>7 you can't advise clients of this option, that you're</p> <p>8 basically making clients use sort of specific terms?</p> <p>9 A. No. I don't have any concern about that.</p> <p>10 Q. Okay.</p> <p>11 A. You know, if someone comes in and says, "Well,</p> <p>12 I want something for voting. I want to be able to</p> <p>13 vote," they don't have use a particular combination of</p> <p>14 words. They just can't come in and say, "I don't have</p> <p>15 enough money," and we offer them this because the</p> <p>16 election identification card may not satisfy their needs</p> <p>17 that they're actually try to satisfy. It won't allow</p> <p>18 them to drive. It won't allow them to use it for other</p> <p>19 purposes.</p> <p>20 Q. Is DPS going to have any publicly-visible</p> <p>21 notices or posters or ads letting people know about the</p> <p>22 option to get this identification for voting?</p> <p>23 A. I think the communication for the voting-</p> <p>24 related information was primarily the responsibility of</p> <p>25 the Secretary of State.</p>	<p style="text-align: center;">104</p> <p>1 one, are they entitled to get an Election Identification</p> <p>2 Certificate?</p> <p>3 A. No, because they still have -- they are still</p> <p>4 eligible and have their -- they still in our records</p> <p>5 show as having a driver license or an ID card.</p> <p>6 Q. So is it your understanding that you would be</p> <p>7 unable to issue an EIC based on the language of SB 14?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And can you look at Page 3 for me, specifically</p> <p>10 towards the bottom the page, it says, "Prior to issuance</p> <p>11 of an election certificate," and under that, there's a</p> <p>12 line that has some language bolded that says, "Do not</p> <p>13 issue an Election Identification Certificate --" "do not</p> <p>14 issue an election certificate if a matching record is</p> <p>15 found under the following circumstances," and the second</p> <p>16 one says, "DLS indicates the person is ineligible, i.e.,</p> <p>17 suspended, revoked, canceled, or denied." Can you tell</p> <p>18 me what those categories mean?</p> <p>19 A. I can't tell you the very nuance differences</p> <p>20 between suspended and revoked, but basically it means</p> <p>21 that for some reason, they lost their driving privilege.</p> <p>22 Q. Okay.</p> <p>23 A. And yet they still have their card for</p> <p>24 identification purposes.</p> <p>25 Q. So in each one of these categories, they would</p>

105

1 have lost their driving privileges, but would still  
 2 have --  
 3 A. They'd still have the card in their possession.  
 4 Q. And is the card any different than a regular  
 5 driver's license?  
 6 A. It's still the original driver license. It  
 7 just cannot be used for driving.  
 8 Q. Do you know how many people are in these  
 9 categories of suspended, revoked, canceled, and denied  
 10 driver's licenses?  
 11 A. No, not off the top of my head, I don't. Those  
 12 were -- those details would have been in Question 3, and  
 13 I am not responding to Question 3.  
 14 Q. I'm sorry. Question 3?  
 15 MR. McKENZIE: In the notice.  
 16 MS. MARANZANO: Oh, in the notice.  
 17 MR. McKENZIE: She doesn't know about that  
 18 stuff.  
 19 MS. MARANZANO: I see.  
 20 Q. (By Ms. Maranzano) Do you know if some people  
 21 have driver's licenses that get confiscated by law  
 22 enforcement?  
 23 A. My understanding is yes, there are some very  
 24 rare occurrences where the officer is authorized to take  
 25 their driver licenses. I do not -- and my understanding

106

1 is also that the officers frequently don't exercise that  
 2 option.  
 3 Q. Okay. So is it your understanding that this is  
 4 a small group of people who would be in the category of  
 5 having confiscated driver's licenses?  
 6 A. Yes, ma'am.  
 7 Q. And is it your understanding that these  
 8 individuals would not be eligible for an EIC because  
 9 they would technically still have a valid driver's  
 10 license?  
 11 THE WITNESS: It's part of 3. Do you want  
 12 me to answer it?  
 13 MR. McKENZIE: Well, she's asking about  
 14 Election Identification Certificates and the  
 15 qualifications for that, so that's why I didn't pose the  
 16 objection.  
 17 THE WITNESS: Okay.  
 18 A. Yes. I mean, if you still have your card, it's  
 19 not valid for driving purposes, but it's valid for  
 20 identification purposes.  
 21 Q. (By Ms. Maranzano) Okay. So if it's  
 22 confiscated, wouldn't the person not have it?  
 23 A. I'm sorry. I didn't hear that you said it was  
 24 confiscated.  
 25 Q. Yeah. I'm sorry. I'm still on the topic about

107

1 individuals whose license may be confiscated by law  
 2 enforcement.  
 3 A. Uh-huh.  
 4 Q. Presumably their license is still valid; is  
 5 that correct?  
 6 A. It's not valid for driving purposes.  
 7 Q. Okay. Would they be entitled to an Election  
 8 Identification Certificate?  
 9 A. Unless -- you know, I don't know. Sorry. I'm  
 10 getting tired. Do you want to ask the -- ask the  
 11 question one more time, please?  
 12 Q. Sure. If an individual has a driver's license  
 13 that's confiscated by law enforcement, would that person  
 14 be eligible for an Election Identification Certificate?  
 15 A. To be perfectly honest, I don't know the answer  
 16 to that question. I'm sorry.  
 17 Q. Okay. Do you know who would know the answer to  
 18 that question?  
 19 A. We have a whole host of people that would know  
 20 the answer to that question, and I might if I wasn't  
 21 tired.  
 22 Q. I know the feeling. Okay. Would somebody at  
 23 DPS?  
 24 A. Yes.  
 25 Q. And I think you said it's -- it's a small

108

1 number of people with a confiscated license. During the  
 2 Committee of the Whole, there was testimony that  
 3 suggested it was a hundred thousand individuals. Does  
 4 that sound --  
 5 A. I'm sorry. I don't know the answer. I don't  
 6 know what the numbers are.  
 7 Q. Okay. And do you know what a revocation form  
 8 is?  
 9 A. Not in any specific detail, no, ma'am.  
 10 Q. But it's your testimony that a person whose  
 11 license is revoked still possesses it; is that correct?  
 12 A. Yes. I believe most of the instances where  
 13 they are suspended or revoked or those kinds of actions  
 14 are taken, it's their driving privileges that are taken  
 15 away.  
 16 Q. Okay. And do you think that -- well, let me  
 17 ask this: If the EIC program is implemented, would  
 18 there be any instructions or guidance provided to law  
 19 enforcement so that people understood that it was just  
 20 their driving privileges that were being taken away when  
 21 -- when their driver's license was either suspended or  
 22 revoked or canceled or denied?  
 23 MR. McKENZIE: Again, I'm going to  
 24 object. This is kind of -- this is mostly a question  
 25 about Number 3, which is beyond the scope of what she's

109

1 been put up for. So I'm going to -- you can make your  
2 record, but I'm going to object.

3 MS. MARANZANO: Okay. And also for the  
4 record, I'm just -- I'm really, actually, trying to  
5 figure out, sort of, the pool of people who are eligible  
6 for the EIC.

7 MR. McKENZIE: Okay.

8 MS. MARANZANO: And that's what these  
9 questions are trying to get at.

10 MR. McKENZIE: Okay.

11 A. And I don't understand why we would notify law  
12 enforcement about election identification certificates,  
13 so maybe you need to try and repeat your question.

14 Q. (By Ms. Maranzano) Yeah. I'm wondering if  
15 people whose licenses are suspended or revoked or  
16 canceled or denied, if those people are given clear  
17 instructions by law enforcement that it's only their  
18 driving privileges that are being impacted by these  
19 actions, whether they can still -- do they understand  
20 that they can still use their identification?

21 A. I have no knowledge of what law enforcement  
22 tells people.

23 Q. Okay. And DPS doesn't work with law  
24 enforcement at all on that issue?

25 A. Well, we may give guidance, but what -- what

110

1 law enforcement actually says, I have no knowledge of  
2 that.

3 Q. Okay. Do you have any knowledge of whether you  
4 do give guidance?

5 A. Well, I specifically would not give  
6 guidance. THP, the Texas Highway Patrol, may give  
7 guidance.

8 Q. Okay. Anybody in DPS -- is THP a part of DPS?

9 A. Yes, ma'am. I'm sorry.

10 Q. Okay. Okay. Have there been any discussion  
11 that this might be an area you'd want to reach out to  
12 law enforcement to, should the EIC program be  
13 implemented in terms of -- and just to be --

14 A. Not to my knowledge.

15 Q. Okay. Just to be clear for the record, I mean  
16 reach out to law enforcement to give them guidance about  
17 informing people that their ID is still valid as an ID,  
18 just not for driving?

19 MR. McKENZIE: That's the same general  
20 objection that the instructions about to law enforcement  
21 on their face don't have anything to do with the EICs,  
22 but you may make your record.

23 Q. (By Ms. Maranzano) Not to your knowledge?

24 A. Not to my knowledge.

25 Q. Okay. If somebody applies for an EIC and

111

1 there's a surcharge associated with his or her record  
2 when they apply, how would DPS handle that?

3 A. It seems to me that the surcharge, the matter  
4 of the surcharge is irrelevant, because that, again,  
5 affects their driving privileges. They would still have  
6 their document for identification purposes.

7 Q. Okay. So would only somebody who has a  
8 driver's license or an ID have a surcharge? Is that --

9 A. It's only a driver license.

10 Q. Okay. Now, what if they had a driver's license  
11 that was expired, could there still be a surcharge  
12 associated with that person's record?

13 MR. McKENZIE: The same objection as to  
14 scope, but you may answer.

15 A. Yeah. And if it was expired past that limit,  
16 then they'd be eligible for an EIC.

17 Q. (By Ms. Maranzano) Okay. Okay. So would any  
18 -- would any action be taken with regard to the  
19 surcharge if they came in to apply for an EIC?

20 A. No.

21 Q. Do you know how many people have surcharges  
22 associated with their records?

23 A. No.

24 Q. And did you testify earlier that DPS generally  
25 issues a driver's license within ten days?

112

1 A. Yes.

2 Q. And you would expect an EIC to be issued in the  
3 same amount of time?

4 A. Yes, ma'am.

5 Q. Is there any concern that implementing the EIC  
6 program will actually slow everything down?

7 A. No.

8 Q. Why is that?

9 A. We -- we deal with increases. We have dealt  
10 with increases in population. You know, it's -- it's  
11 part of the process.

12 Q. So it would be similar -- it would be similar  
13 to other population increases that you faced?

14 A. Population increases, different changes.

15 Q. Can you turn back to Deposition Exhibit 834,  
16 and I'm looking again at the page that has the pictures,  
17 Page 2. And we talked a little bit about the security  
18 features that are on the EIC. What security features  
19 are on the temporary EIC?

20 A. The picture.

21 Q. Anything else?

22 A. The picture is the predominant one.

23 Q. And the temporary certificate can be used for  
24 voting; is that correct?

25 A. Yes, ma'am.

113

1 Q. Was there any discussion, either within DPS or  
 2 with the Secretary of State, about whether or not it  
 3 will be confusing to poll workers to have two different  
 4 varieties of an EIC?  
 5 A. I don't recall any discussion like that.  
 6 Q. Are you aware that during the legislative  
 7 debates, legislators actually said on the public record  
 8 that they didn't want to accept additional forms of ID  
 9 because it might confuse poll workers in terms of having  
 10 too many forms of ID to recognize?  
 11 MR. McKENZIE: Objection, beyond the  
 12 scope, but you may answer.  
 13 A. I don't specifically recall that.  
 14 Q. (By Ms. Maranzano) And we talked a little bit  
 15 previously about training that you plan to implement for  
 16 staff at driver's license offices. How -- how long do  
 17 you expect the training to be for staff that's going to  
 18 talk about the EIC program?  
 19 A. I think it's an hour or two.  
 20 Q. I'm sorry. An hour or two hours?  
 21 A. Yeah. I can't recall exactly.  
 22 Q. And is there any quality control plan for  
 23 ensuring that driver's license employees actually  
 24 implement this program correctly?  
 25 A. Well, we are providing the training to all

114

1 employees.  
 2 Q. Uh-huh.  
 3 A. And they sign a slip that says yes, I had the  
 4 training, yes, I understand, and yes, I'll follow the  
 5 procedures.  
 6 Q. Anything else?  
 7 A. (Witness shakes head no.)  
 8 MR. McKENZIE: Say it.  
 9 A. No. I'm sorry.  
 10 Q. (By Ms. Maranzano) Is there -- is there a  
 11 specific amount of the budget that's devoted to a  
 12 training program for Election Identification  
 13 Certificates?  
 14 A. No, ma'am.  
 15 (Exhibit 836 marked for identification.)  
 16 Q. (By Ms. Maranzano) I'm showing you what we're  
 17 marking as Deposition Exhibit 836. Can you look at this  
 18 and let me know if it looks familiar to you?  
 19 A. Yes.  
 20 Q. Is this the current model for an application  
 21 for a Texas Election Certificate?  
 22 A. Yes.  
 23 Q. Would you say that it's -- it's in final form  
 24 such that if the program were to be implemented, you  
 25 would actually use this application?

115

1 A. Yes.  
 2 Q. Do you see at the bottom of the -- not at the  
 3 bottom. At the bottom of the squared part of the  
 4 application, there's a number of things listed, such as  
 5 place of birth, county, state, country, father's last  
 6 name, mother's maiden name. Why are you including those  
 7 questions on this application?  
 8 A. Above the line that says place of birth, city,  
 9 county, state, country, it says if you are not a U.S.  
 10 citizen, you are not eligible for an election  
 11 certificate, so that seems like that would explain the  
 12 first part. And my guess is that the father's last name  
 13 and mother's maiden name, that it's -- it's based upon  
 14 the driver license and identification card application.  
 15 Q. So what do you do with this information? And  
 16 I'm specifically referring to those fields that we just  
 17 discussed.  
 18 A. I'm not -- it's not actively used in the  
 19 process.  
 20 Q. So you collect it, but you don't use it?  
 21 A. We -- we don't routinely use it, no.  
 22 Q. At any time during the consideration of SB 14  
 23 or since its passage, has there been a discussion at DPS  
 24 about doing any sort of outreach to issue IDs without a  
 25 charge for voting to individuals who do not possess any

116

1 ID?  
 2 A. I believe that the discussions with the  
 3 Secretary of State would be that that be a more  
 4 appropriate responsibility for them.  
 5 Q. And you did discuss that with the Secretary of  
 6 State?  
 7 A. I believe there were some discussions about  
 8 that.  
 9 Q. Were you involved in those discussions?  
 10 A. There probably was -- I was not involved in  
 11 every meeting with the Secretary of State. It was  
 12 probably discussed generally in at least one of the  
 13 meetings that I was in. I can't tell you if it was  
 14 discussed at other meetings.  
 15 Q. Was the decision about whether or not to do  
 16 that left to the Secretary of State or to DPS or to some  
 17 other entity?  
 18 A. Well, there -- there was no requirement for it,  
 19 and it seemed like, since it's the Secretary of State's  
 20 responsibility related to voting, ours is only -- our  
 21 process in this is only to issue the card.  
 22 Q. So DPS did not feel as though it was DPS's  
 23 responsibility to plan any sort of outreach --  
 24 A. To plan a communication and outreach campaign,  
 25 that's correct.

<p style="text-align: center;">117</p> <p>1 Q. And just to be clear, in this regard, I'm not</p> <p>2 actually talking about communication, but actually some</p> <p>3 sort of outreach to issue the IDs in some kind of</p> <p>4 fashion other than having people come to drivers'</p> <p>5 license offices?</p> <p>6 A. No, ma'am.</p> <p>7 Q. At any time since you've worked at DPS, has</p> <p>8 there been outreach of any variety to issue IDs to</p> <p>9 people who might not have them?</p> <p>10 A. No.</p> <p>11 (Exhibit 837 marked for identification.)</p> <p>12 Q. (By Ms. Maranzano) Can you please look at</p> <p>13 this? I'm sorry. I'm showing you what we're marking as</p> <p>14 Deposition Exhibit 837. If you can take a look and let</p> <p>15 me know if this looks familiar to you.</p> <p>16 A. (Witness reviewing document.) Yes, it looks</p> <p>17 familiar.</p> <p>18 Q. Did you receive this e-mail in January of 2012?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. And the subject line of the e-mail says,</p> <p>21 "Suggested responses for Bloomberg." Are these</p> <p>22 suggested responses to a media request?</p> <p>23 A. Yes, I believe they were.</p> <p>24 Q. Can you look at Number 4 on -- it's on the back</p> <p>25 of the page.</p>	<p style="text-align: center;">119</p> <p>1 resources for issuance of election certificates."</p> <p>2 Was there any discussion at DPS that if</p> <p>3 you got additional resources, you would provide mobile</p> <p>4 outreach for issuing election certificates?</p> <p>5 A. No. There's no discussion of receiving</p> <p>6 additional resources for election certificates.</p> <p>7 Q. You never -- you never discussed requesting</p> <p>8 additional funds from the legislature?</p> <p>9 MR. McKENZIE: Objection. I'm sorry.</p> <p>10 Q. (By Ms. Maranzano) Or issuing, yeah, election</p> <p>11 certificates?</p> <p>12 MR. McKENZIE: Objection, asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: I'm sorry. If you answered</p> <p>15 it, am I supposed to answer it, too?</p> <p>16 MR. McKENZIE: No, no, no, no, no. I made</p> <p>17 an objection, asked and answered. But you still have to</p> <p>18 answer the question. We've probably lost the question</p> <p>19 by now, so...</p> <p>20 THE WITNESS: Yeah. I'm sorry. I don't</p> <p>21 have any idea what the question was.</p> <p>22 Q. (By Ms. Maranzano) Let me ask you this: If --</p> <p>23 any resources that would have gone -- that would have --</p> <p>24 that could have been used for outreach would have come</p> <p>25 from the legislature; isn't that correct?</p>
<p style="text-align: center;">118</p> <p>1 A. Uh-huh.</p> <p>2 Q. It says, "Are there any plans to provide mobile</p> <p>3 vans or other means of reaching people in counties where</p> <p>4 there currently isn't an office or limited hours?" And</p> <p>5 underneath the response, you can see some writing that</p> <p>6 was crossed out. Were those -- was that a draft</p> <p>7 response that was changed?</p> <p>8 A. Do you mean the first Number 4 or the second</p> <p>9 Number 4?</p> <p>10 Q. I'm sorry. I'm looking at the second</p> <p>11 Number 4. Thank you for clarifying.</p> <p>12 MR. McKENZIE: And I would -- there's no</p> <p>13 foundation, but you may answer the question.</p> <p>14 A. And I'm sorry, what was your question?</p> <p>15 Q. (By Ms. Maranzano) There's writing here that</p> <p>16 has a line through it. What -- what do you think that</p> <p>17 -- what is that writing?</p> <p>18 MR. McKENZIE: Same objection.</p> <p>19 A. That was probably a draft response that was</p> <p>20 edited.</p> <p>21 Q. (By Ms. Maranzano) So it looks to me like</p> <p>22 what's written there, that that probably was a draft</p> <p>23 response. It says, "There are no plans to deploy mobile</p> <p>24 units for issuance of election certificates." And then</p> <p>25 the next sentence says, "DPS was not provided additional</p>	<p style="text-align: center;">120</p> <p>1 A. Yes.</p> <p>2 Q. And did DPS ever request any -- any funds for</p> <p>3 that purpose?</p> <p>4 A. For outreach?</p> <p>5 Q. Uh-huh.</p> <p>6 A. No, ma'am.</p> <p>7 Q. Okay.</p> <p>8 (Exhibit 838 marked for identification.)</p> <p>9 Q. (By Ms. Maranzano) I'm showing you what we're</p> <p>10 marking as Deposition Exhibit 838. Can you take a look</p> <p>11 at this and tell me if that looks familiar to you?</p> <p>12 A. (Witness reviewing documents.) Vaguely.</p> <p>13 Q. What is this document?</p> <p>14 A. I believe it is a response to questions that</p> <p>15 were received from the Senate Committee of the Whole</p> <p>16 Q. And can you look at the second -- and just to</p> <p>17 be clear, were you the person who was testifying? I</p> <p>18 think you earlier said you did testify to the Senate</p> <p>19 Committee of the Whole; is that correct?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. So these were responses to questions that came</p> <p>22 up during your testimony?</p> <p>23 A. Yes, ma'am.</p> <p>24 MR. McKENZIE: I'm going to object as to</p> <p>25 scope. Yeah.</p>



121

1 MS. MARANZANO: Okay.  
 2 Q. (By Ms. Maranzano) Can you look at the second  
 3 line down that talks about, "Please comment on  
 4 Department's 5 percent reduction and 10 percent proposed  
 5 reduction in the legislative appropriations request."  
 6 And the first sentence says, "The  
 7 Department lost 14.6 million due to the 5 percent cut in  
 8 general revenue that we faced." How did the reduction  
 9 of funds affect -- affect drivers' license offices  
 10 around the state?  
 11 A. It didn't specifically -- it didn't noticeably  
 12 affect us.  
 13 Q. Not at all?  
 14 A. Noticeably.  
 15 Q. What do you mean by noticeably?  
 16 A. Because I think we lost some general revenue  
 17 money. It was a small percentage of our budget.  
 18 Q. So what is general revenue money?  
 19 A. I'm sorry. We get money from different pots.  
 20 Q. Uh-huh.  
 21 A. And that was just one of the pots.  
 22 Q. Okay.  
 23 A. And that was what was affected by the  
 24 reduction.  
 25 Q. Okay. The third sentence under that bullet

122

1 says, "The Department's 10 percent produced reduction  
 2 schedule identified that 11 DPS offices might have to  
 3 close. These are not necessarily drivers' license  
 4 offices." Do you recall whether or not 11 offices did  
 5 close?  
 6 A. No, ma'am.  
 7 Q. You don't recall?  
 8 A. I don't know about any other -- no, I don't.  
 9 Q. Do you know if any offices had to reduce hours  
 10 based on the budget cuts?  
 11 A. No, ma'am.  
 12 Q. Do you know if any offices had to cut their  
 13 staffs based on budget cuts?  
 14 A. No, ma'am.  
 15 Q. Do you know if any equipment wasn't replaced  
 16 based on the budget cuts?  
 17 A. No, ma'am.  
 18 Q. And just to be clear, you're saying no, you  
 19 don't know, not no, it didn't occur; is that right?  
 20 A. I don't believe that any driver license hours,  
 21 staff, or equipment were reduced.  
 22 Q. Okay. And if this was produced in response to  
 23 your testimony to Committee of the Whole, can I assume  
 24 it was produced in early 2011?  
 25 A. Yes, ma'am.

123

1 Q. Have there been any reductions in offices since  
 2 that time?  
 3 A. There probably have been some offices that have  
 4 closed. And I probably need to amend the -- they would  
 5 have been closed because the equipment failed and  
 6 because it was so old that it was irreplaceable.  
 7 Q. Do you know how many offices that was?  
 8 A. I'm sorry. I don't -- I don't know the number.  
 9 Q. Do you know where in the state that was?  
 10 A. I don't. No, I don't. I can't pinpoint  
 11 locations for you.  
 12 Q. And you're talking about since 2011 or prior to  
 13 2011?  
 14 A. There have been some offices that have closed  
 15 since 2011, or at the tail the end of 2011.  
 16 Q. Do you know about how many, approximately?  
 17 A. I really don't, because the number has been  
 18 changing.  
 19 Q. The number has been changing?  
 20 A. The number has been changing because some  
 21 offices have reopened.  
 22 Q. Okay.  
 23 A. We used to move equipment, and those were  
 24 called mobile offices, and we now call them scheduled  
 25 offices, because we move people. The equipment stays in

124

1 place. So it's fluid, and that's why it's a very  
 2 difficult question to answer.  
 3 Q. Okay. Can you look a few questions down, do  
 4 you see that there's a question that says, "Are there  
 5 drivers' offices within the 610 loop," and the response  
 6 is "No." Do you -- what -- what is the 610 loop?  
 7 A. It's in Houston.  
 8 Q. And do you know what that -- what that means,  
 9 the 610 loop?  
 10 A. They -- they were asking -- I believe it's the  
 11 inner loop in Houston.  
 12 Q. Do you know how many people reside in  
 13 that area?  
 14 A. No, ma'am, I don't.  
 15 Q. Is it still the case today that there are no  
 16 drivers' license offices within that loop?  
 17 A. I believe that's true. One of our offices in  
 18 the Houston area moved, and I'm -- I'm not familiar.  
 19 The reason this question showed up on this list is  
 20 because I don't know Houston to know, like, okay, yeah,  
 21 that's inside the loop or out. I don't -- I don't  
 22 believe that there's an office inside the loop 610 in  
 23 Houston.  
 24 Q. Does DPS conduct studies on the number of  
 25 residents that are serviced in particular geographic

125

1 areas in the state?

2 A. We actually did a study like that. We worked

3 with -- we contracted with Texas State University in

4 San Marcos, and they did a business intelligence

5 analysis for us. They looked at all the transactions

6 that were done in the driver license offices in 20 --

7 calendar year 2010, with the explicit goal of providing

8 recommendations on how to kind of provide the most

9 equitable level of service that we could.

10 Q. Did they also look at wait times in offices?

11 A. The information on wait times that was

12 available to them at that time was very limited, so not

13 really.

14 Q. Did they look at the number of staff needed to

15 serve clients in -- at different offices?

16 A. Yes, they did.

17 Q. And did they look at the equipment that would

18 be needed to serve the number of clients at offices?

19 A. No, they didn't really look at equipment.

20 Q. And what recommendations did they make in this

21 study, generally speaking?

22 A. Uh-huh. Generally, they -- they looked and

23 probably the general consensus was that there was a need

24 for -- you know, they -- they looked and showed the

25 population, the variation of population distribution in

126

1 the state and that kind of thing and generally said

2 there's -- there's an opportunity for more resources to

3 be used.

4 Q. So they said there's an opportunity for more

5 resources in particular areas or statewide?

6 A. Well, they kind of did in -- across the state,

7 they looked at all of our offices.

8 Q. And was the purpose --

9 A. To help us make better decisions and -- and

10 really kind of understand our business.

11 Q. Do you think it was effective?

12 A. I think it was very helpful.

13 Q. Was this a -- sort of a one-time deal, or is

14 this something that DPS does on periodically?

15 A. Well, I think it was the first time that it was

16 done. And we may do it again, but there's no specific

17 plans at this moment.

18 Q. Were there any geographic areas in the state

19 that -- that were flagged as being particularly

20 problematic?

21 A. I think probably the general consensus was that

22 the eastern portion of the state, that's the more

23 populated area of the state, was -- had the most need.

24 Q. And what do you mean by that, in terms of was

25 it signaling that you needed more offices there or that

127

1 the offices needed more staff or?

2 A. It was generally that more staff were needed.

3 They didn't necessarily specify, oh, you need six more

4 offices or you need -- you need more offices; that kind

5 of thing. Now, ultimately, the report -- because the

6 report was -- the development of the report was going on

7 during the legislative session, and the report

8 ultimately said, yes, if you're going to -- because the

9 legislature gave us some additional resources, and they

10 said okay, if you get these additional resources, this

11 is where we recommend that they go.

12 Q. And they recommended a geographic region?

13 A. Yes.

14 Q. Okay. And they recommended the eastern part of

15 the state?

16 A. Yes. The Metroplex, Houston, San Antonio, and

17 Austin.

18 Q. I'm sorry?

19 A. The Metroplex, Houston, San Antonio, and

20 Austin.

21 Q. Okay. And at the time that this study

22 happened, this was prior to SB 14 being enacted; isn't

23 that --

24 A. The study was started before, yes.

25 Q. Did the study make any recommendations about

128

1 how to decrease wait times around the state?

2 A. More staff.

3 Q. More staff overall?

4 A. (Witness nods head yes.)

5 MS. MARANZANO: Can we get this marked?

6 (Exhibit 839 marked for identification.)

7 Q. (By Ms. Maranzano) I'm showing you what we're

8 marking as Deposition Exhibit 839. Can you take a look

9 at it and let me know if that looks familiar to you?

10 A. (Witness reviewing documents.)

11 Q. Do you recognize it?

12 A. Yeah.

13 Q. What is this document?

14 A. It's another document related to answers, I

15 believe, from the Senate Committee of the Whole or

16 somehow related to that, but that's the timing and

17 that's the topics.

18 Q. Does it look like -- like draft responses to

19 some of the questions that came up during the Committee

20 of the Whole?

21 MR. McKENZIE: Objection as to scope and

22 objection as to foundation, but you may answer the

23 question.

24 A. Does it look like a draft document? Is that

25 what you asked?

<p style="text-align: center;">129</p> <p>1 Q. (By Ms. Maranzano) Draft responses to some of 2 the questions that came up during the Committee of the 3 Whole? And the reason why I'm saying that is, 4 underneath, it has -- it has legislators' names and 5 questions, and then it has recommendations, such as it 6 says under the first one, "Recommend saying." 7 A. Uh-huh. That -- that's what it looks like to 8 me. 9 Q. And this -- this document was created in -- or 10 it looks like it was sent to you on -- on the 24th of 11 January of 2011; is that correct? 12 A. That's what it looks like. 13 Q. And under both the first and the second 14 question, which have to do with offices being closed 15 subject to budget cuts and operating hours being 16 affected by budget cuts, the recommendation is basically 17 to talk about this business study, which I imagine is 18 the business study you were just talking about; is that 19 correct? 20 A. Yes, ma'am. 21 Q. Was the business study not complete at the time 22 that you testified in front of the Committee of the 23 Whole? 24 MR. McKENZIE: The same objection as to 25 scope, but you may answer the question.</p>	<p style="text-align: center;">131</p> <p>1 the race of -- you know, we didn't look at racial 2 distribution. 3 Q. (By Ms. Maranzano) Okay. So in other words, 4 no, that wasn't -- that wasn't a concern for you as you 5 testified? 6 A. Nuh-uh. 7 Q. And do you see the third question; it talks 8 about -- a question about what drivers' license 9 documents may be issued without a photo? 10 A. Yes, I do see that. 11 MS. MARANZANO: Can we mark this, please? 12 (Exhibit 840 marked for identification.) 13 Q. (By Ms. Maranzano) I'm showing what we're 14 marking as Deposition Exhibit 840. Can you take a look 15 at this and tell me if it looks familiar? 16 A. (Witness reviewing documents.) 17 Q. Does this look familiar to you? 18 A. Well, I wasn't copied on it, so I can't -- I 19 can't say it's memorable. 20 Q. Do you see in the "To," it actually says, 21 "Gallegos," and it has a name, and the subject line says 22 DIC-57, and in the -- in Deposition Exhibit 839, the 23 question that we were looking at, the response says, 24 "See attachment DIC-57"? 25 A. I see that DIC-57 is on both -- both documents,</p>
<p style="text-align: center;">130</p> <p>1 A. Yes, ma'am, it was. Oh, the question was, was 2 it not complete? No, it was not complete. 3 Q. (By Ms. Maranzano) It was ongoing? 4 A. Yes. In fact, it had just started. 5 Q. Was there any concern that DPS might be closing 6 offices or cutting services in areas where a lot of 7 minority voters lived and -- and that that could impact 8 the outcome on SB 14 if you were to testify to that 9 fact? 10 MR. McKENZIE: Same objection as to scope. 11 A. I'm sorry. Could you ask your question again? 12 Q. (By Ms. Maranzano) Sure. Was there any concern 13 in terms of these questions about potential offices 14 being closed or hours being affected, was there any 15 concern that you might be doing those things, closing 16 offices or cutting hours in areas of the state where 17 many minority voters lived and -- and that saying such a 18 statement during the consideration of SB 14 might 19 actually impact how people voted on it? 20 MR. McKENZIE: And I also caution the 21 witness not to reveal individual legislator 22 communications, but otherwise, you may answer subject to 23 my earlier objections. 24 A. The analysis really -- the business 25 intelligence analysis was not conducted with regard to</p>	<p style="text-align: center;">132</p> <p>1 yes. 2 Q. And that the question is from Senator Gallegos, 3 and it looks like this e-mail was sent to Senator 4 Gallegos; is that correct? 5 MR. McKENZIE: Objection, foundation, but 6 you may answer. 7 Q. (By Ms. Maranzano) Actually, it looks like it 8 was sent to somebody else who is in Senator Gallegos's 9 office. 10 A. Yes, I see that, too. 11 Q. And do you see that the content of this 12 document is about IDs that are issued without photos? 13 A. Yes, I do see that. 14 Q. Are you aware of whether DPS routinely issues 15 certain types of nonphoto ID? 16 A. This is -- that's what these documents 17 reference, that there's a couple of documents that we 18 issue if we don't have any other way around it. 19 Q. How many people have those documents? 20 A. I don't know that. 21 Q. And this e-mail talks about two forms of ID 22 without photo; is that correct? 23 A. It appears to be the DI-57 and an occupational 24 driver -- well, it says there are a couple of other 25 documents and an occupational driver license and a</p>

133

1 driver license requiring an ignition interlock device.

2 Q. Okay. And in the first paragraph, it says  
3 there are two documents that are routinely issued  
4 without photos, correct?

5 A. Yes.

6 Q. And it says one is the DIC-25 and other is a  
7 DIC-57?

8 A. Yes.

9 Q. Do you know what it means by routinely issued?

10 A. I don't.

11 MR. McKENZIE: Objection as to foundation  
12 and speculation, but you may answer.

13 THE WITNESS: I'm sorry.

14 MR. McKENZIE: It's okay.

15 Q. (By Ms. Maranzano) Do you know if these  
16 individuals, individuals who possess these forms of ID  
17 would be eligible for an Election Identification  
18 Certificate?

19 A. I don't.

20 Q. Are you aware of any documents that aren't  
21 referred to in this -- in this exhibit, Deposition  
22 Exhibit 840, that are issued by DPS that don't have  
23 photos?

24 A. I'm not aware of any, no.

25 (Exhibit 841 marked for identification.)

134

1 Q. (By Ms. Maranzano) I'm showing you what we're  
2 mark as Deposition Exhibit 841. Can you take a look at  
3 that and tell me if it looks familiar to you?

4 A. Yes. It doesn't look exactly familiar to me,  
5 but I'm basically familiar with the information.

6 Q. Okay. What is this document?

7 A. It appears to be list of offices by region  
8 showing their hours of operation and their light day.

9 Q. And do you see at the bottom right-hand corner,  
10 it says 6-12-2012?

11 A. Yes, I do.

12 Q. Do you believe this document to be current as  
13 of 6-12-2012, if you know?

14 A. That date would -- would lead me to believe  
15 that. I don't know where this document came from,  
16 though.

17 Q. Okay. Well, I can represent to you that it was  
18 produced by the State of Texas, and it has a Bates label  
19 at the bottom with a TX. But let me ask you this: As  
20 you look through it --

21 A. But I don't know who -- what entity generated  
22 this.

23 Q. Okay. Can you just glance through it and let  
24 me know if -- to the best of your knowledge, if it's an  
25 accurate reflection of driver's license offices that are

135

1 open and their hours of operation.

2 A. I'm afraid I couldn't glance through and -- and  
3 do that.

4 Q. Okay.

5 A. So, no.

6 Q. Okay. Let me ask you this: How many

7 operational drivers' licenses -- drivers' license

8 offices currently exist in Texas?

9 A. There are 223 as of today.

10 Q. And does that number change frequently?

11 A. Yes, it does change. There will be 227,  
12 probably, in September. 228 predicted to be open in  
13 January of 2013. So yes, it does change.

14 Q. Okay. How many counties don't have a driver's  
15 license office?

16 A. You know, I really don't look at -- I really

17 don't know that off the top of my head.

18 Q. Do you think it's more than 50?

19 MR. McKENZIE: Objection, speculation, but  
20 you may answer.

21 A. I have seen numbers that show that, but I have  
22 not personally gone through and verified, and I haven't  
23 looked recently with the changes in the offices.

24 Q. (By Ms. Maranzano) So as the assistant director  
25 of, you know, the Driver's License Division, is there --

136

1 you know, do you keep track of offices in a different  
2 way? Is that why you're not familiar with counties  
3 without drivers' license offices?

4 A. Yeah. I don't look at it as counties without  
5 driver license offices. We look at the service that  
6 we're providing, and it could be that there may be a  
7 county that doesn't have a driver license office, and  
8 yet the population of that county -- Texas has 254  
9 counties, and, you know, that's -- that's a very large  
10 number of counties. And so it may that be there's a  
11 county that doesn't have a population -- I mean, that  
12 doesn't have a driver license office in it, but there  
13 are counties adjacent, contiguous counties that have a  
14 driver license office.

15 Q. Uh-huh.

16 A. And that the population of the state -- I mean,  
17 the population of that county could easily and very  
18 quickly go to another county.

19 Q. Uh-huh.

20 A. You know, to a driver license office in another  
21 county, you know. I don't think necessarily the county  
22 bounds are the most significant means of looking at and  
23 evaluating driver license office locations.

24 Q. Okay. But you are prepared, I assume, to  
25 testify about locations where people can get Election

137

1 Identification Certificates and their hours of service  
 2 and the wait times and the resources available for  
 3 customers with limited English proficiency pursuant to  
 4 Number 4 of the notice of deposition?  
 5 A. Yes, I am. You can get Election Identification  
 6 Certificates when and if we are directed to issue them,  
 7 you will be able to get them at every single one of our  
 8 offices during the entire hours of operation.  
 9 Q. Okay. And you said you don't look at this on a  
 10 county level. Do you -- and I mean DPS. Does DPS do an  
 11 analysis of distances people may need to travel to get  
 12 to drivers' license offices?  
 13 A. There was a look at that in the business  
 14 intelligence analysis.  
 15 Q. Are there any anticipated office closings in  
 16 the next year?  
 17 A. No.  
 18 Q. Any anticipated employee layoffs in the next  
 19 year?  
 20 A. No.  
 21 Q. Any anticipated hiring freezes in the next  
 22 year?  
 23 A. No.  
 24 Q. Any anticipated reduction in hours in the next  
 25 year?

138

1 A. No.  
 2 Q. Any anticipated reductions in equipment in any  
 3 of these offices in the next year?  
 4 A. No.  
 5 Q. And do you already have your budget for the  
 6 next year, meaning DPS?  
 7 A. Yes. DPS has received the legislative  
 8 appropriation request. I have not -- I mean, the budget  
 9 amount for the Department. I have not yet received my  
 10 detailed budget officially yet.  
 11 Q. So do you think that you would know if any of  
 12 these things were going to happen in the next year?  
 13 A. Yes.  
 14 Q. You would?  
 15 A. In fact, you didn't ask the reverse of those  
 16 questions.  
 17 Q. I haven't yet, no. But we still have time?  
 18 A. Well, in fact, the Driver License Division is  
 19 increasing our staff by 266 employees.  
 20 Q. Okay. And I do want to talk to you about the  
 21 anticipated Mega Centers, but I'm not quite there yet.  
 22 So I just want to ask you if the Election  
 23 Identification Certificate program is implemented, if  
 24 that will impact any of the questions I just asked you  
 25 about offices closing --

139

1 A. No.  
 2 Q. -- or a reduction in services? Okay.  
 3 And can you look at where -- where this  
 4 column says the hours of operation?  
 5 A. Uh-huh. Yes.  
 6 Q. Is it your understanding that this is an  
 7 accurate representation of the hours that these offices  
 8 are open?  
 9 MR. McKENZIE: Objection as to asked and  
 10 answered.  
 11 MS. MARANZANO: Well, I'm not sure she's  
 12 actually answered exactly that -- that question.  
 13 A. The reason that I'm hesitating --  
 14 Q. (By Ms. Maranzano) Uh-huh.  
 15 A. -- is because this does not look like the  
 16 document I reviewed.  
 17 Q. Uh-huh.  
 18 A. So that's why I'm hesitating, because you're  
 19 asking me to certify that these -- this long list of  
 20 hours is accurate. And it's like, I am hesitant to do  
 21 that off the top of my head.  
 22 Q. But do you -- is the document that you  
 23 reviewed, was that from 2011?  
 24 A. No. It was from very recent.  
 25 Q. Well, I can represent to you that your counsel

140

1 has produced this document to us. So as you sit here --  
 2 A. And I have no reason to believe -- there's a  
 3 great deal of level of specificity on this.  
 4 Q. Uh-huh.  
 5 A. So I have no reason to believe that it's  
 6 inaccurate. You can just understand my hesitancy to say  
 7 yes, this is, because it doesn't look exactly like the  
 8 document that I reviewed.  
 9 Q. Right. Right. I just wanted to be clear on  
 10 the record that you have no reason to believe it's  
 11 inaccurate?  
 12 A. That's correct.  
 13 Q. Okay. Can you tell me what, in that column of  
 14 listed hours of operation, some offices say closed and  
 15 some offices say closed temporarily. What does it mean  
 16 to be closed temporarily?  
 17 A. It means that the person who is entering the  
 18 data put closed temporarily. I cannot explain the  
 19 detail for why closed or closed temporarily is there.  
 20 Q. So you're not aware of any difference between  
 21 the offices that are listed as closed and offices that  
 22 are closed temporarily?  
 23 A. I believe that this is a master list of almost  
 24 every driver license office that has ever been, and so  
 25 some of them may have been closed for a longer period of



141

1 time, and so they are closed, and I really -- no, I  
 2 can't.  
 3 Q. As you sit here, are there any plans to reopen  
 4 these offices that are listed as closed temporarily?  
 5 A. We have reopened some offices, and without  
 6 going through all the detail of the list, so...  
 7 Q. Well, can you just look at the ones that are  
 8 listed closed and tell me if any of them --  
 9 A. Well, that's what I'm trying to do. So  
 10 Centerville, I believe was one that we reopened on page  
 11 -- the second, third page. Centerville was one that we  
 12 reopened, and that information has already been recorded  
 13 on here. So I'm guessing that the ones that show as --  
 14 that have already been reopened are marked on here.  
 15 Q. Okay. And in terms of the offices that are  
 16 closed, who makes the decision as to which offices are  
 17 closed?  
 18 A. It's likely -- as I mentioned, this is like the  
 19 historical list, and so some of them are closed. They  
 20 were still reflected on the list of driver license  
 21 offices, but yet they were closed before I got there,  
 22 years before I got there, but they were still on the  
 23 list.  
 24 Q. Uh-huh.  
 25 A. And, you know, it could be a variety of

142

1 things. I mentioned already the equipment that have  
 2 broken that was so old and antiquated that it could not  
 3 be replaced, and that we changed the way that we -- we  
 4 went from a mobile to a scheduled office. There were  
 5 some that the -- the counties may have said, hey, we  
 6 can't provide you this space, or we don't want you here  
 7 or whatever.  
 8 Q. And when those things happen, the equipment  
 9 breaks or you need to find a new space, do you -- well,  
 10 let me -- let me break those down. When the equipment  
 11 breaks, do you -- you just close the office or do you  
 12 get new equipment?  
 13 A. In that particular instance, that was  
 14 information -- that was equipment that worked with our  
 15 Legacy system, and we have gone through and identified  
 16 the offices that we have reopened and we've replaced  
 17 that with new equipment that works with our current  
 18 system.  
 19 Q. So you would -- for the offices that you closed  
 20 because of broken equipment, those are now reopened; is  
 21 that correct?  
 22 A. Yes, some of them are.  
 23 Q. But not all of them?  
 24 A. I don't believe that they were all reopened,  
 25 no, ma'am.

143

1 Q. And the offices that are closed because you  
 2 were kicked out of a space, I think you said, would you  
 3 find a different space for those offices, or you would  
 4 close down in that area?  
 5 A. Typically, we could close down in that area.  
 6 Q. And are those decisions made -- well, how are  
 7 those decisions made?  
 8 A. We -- we look at the volume of transactions  
 9 that occur. We look at the adjacency to a different --  
 10 to offices, other offices.  
 11 Q. So is it fair to say if -- if one of these  
 12 things happen, like you were kicked out of an area, you  
 13 were kicked out of a building in an area that had a high  
 14 volume of traffic, that would impact your decision as to  
 15 whether or not to find new space?  
 16 A. Absolutely.  
 17 Q. Other than the -- the business report that we  
 18 talked about, does DPS track how many people use  
 19 offices?  
 20 A. Yes.  
 21 Q. Is there any -- any reason, other than a  
 22 budgetary one, to close an office?  
 23 A. Well, I mentioned already if the equipment  
 24 failed, you know, it was the Legacy equipment, we're --  
 25 we're asked by the counties to leave, so yes.

144

1 Q. But I think -- okay. All right. So just to be  
 2 clear, my understanding was, if those offices had a high  
 3 volume of traffic, you would reopen an office, correct?  
 4 A. Yes.  
 5 Q. So in other words, there's some sort of cost  
 6 benefit analysis going on, correct?  
 7 A. Sure.  
 8 Q. Would you phrase it differently?  
 9 A. Well, I think we're trying to serve the needs  
 10 of our customers.  
 11 Q. Right. And so are there any other reasons to  
 12 close an office other than equipment breaking or getting  
 13 kicked out of a space by the county?  
 14 A. Those would be the primary ones.  
 15 MS. MARANZANO: Okay. Well, I know you  
 16 want a break. Do y'all want to break for five minutes?  
 17 MR. McKENZIE: Yeah, that's fine.  
 18 (Recess from 3:48 p.m. to 4:01 p.m.)  
 19 MS. MARANZANO: Okay. Back on the record.  
 20 Q. (By Ms. Maranzano) All right. Before the  
 21 break, we were talking about Deposition Exhibit 841, and  
 22 I believe you testified, but I want to be clear, that  
 23 every driver's license office currently open will be  
 24 able to provide services for individuals who want to  
 25 apply for the Election Identification Certificate?

145

- 1 A. That's correct.
- 2 Q. And did you say earlier that you no longer have
- 3 offices designated as "mobile"?
- 4 A. That's correct. We changed the designation to
- 5 "scheduled."
- 6 Q. And do you know how many offices you have that
- 7 are scheduled?
- 8 A. I believe there's 49.
- 9 Q. 49. And what exactly does that mean?
- 10 A. We have full-time offices and we have scheduled
- 11 offices. Full-time offices are open Monday through
- 12 Friday. Scheduled offices are not.
- 13 Q. So any office that is not open Monday through
- 14 Friday is designated as scheduled?
- 15 A. Yes, ma'am.
- 16 Q. Are some of the drivers' licenses offices
- 17 around the state only open a couple of times per month?
- 18 A. Yes. I believe there are a couple of those,
- 19 several of those. I don't know the exact number. And
- 20 that's based upon the demand.
- 21 Q. Are those offices concentrated in any
- 22 particular part of the state?
- 23 A. I think generally you could say they're the --
- 24 the offices that are open just a couple of times a
- 25 month?

146

- 1 Q. Uh-huh.
- 2 A. Generally, they would be in the lesser
- 3 population areas of the state, the western portion.
- 4 Q. Are you familiar with the demographics of that
- 5 -- that portion of the state?
- 6 A. No.
- 7 Q. Are any offices open on weekends?
- 8 A. No, ma'am.
- 9 Q. Have they ever been since you've been working
- 10 at DPS?
- 11 A. Not since I've been working at DPS.
- 12 Q. Are you aware of whether in any -- at any time
- 13 in the last ten years, drivers' license offices have had
- 14 any weekend hours?
- 15 MR. McKENZIE: Objection, foundation. You
- 16 may answer.
- 17 A. I don't know within the past ten years. I know
- 18 within the history of driver license operations, there
- 19 was sometime when they were open on Saturdays, but I
- 20 don't know if it was within the past ten years.
- 21 Q. (By Ms. Maranzano) Okay. Do you know why there
- 22 are no weekend hours currently?
- 23 A. I feel like I should, but I don't, really.
- 24 Q. Of the offices -- well, let me ask you
- 25 this: Has there been discussion at DPS about the

147

- 1 possibility of opening any drivers' license offices on
- 2 the weekends?
- 3 A. Yes, there has.
- 4 Q. Recently?
- 5 A. Yes.
- 6 Q. And are there any plans to do so?
- 7 A. Currently, no.
- 8 Q. Do you know why?
- 9 A. Well, I think we are trying to reduce wait
- 10 times, and if you just extend the hours, you don't
- 11 necessarily do that. So if we actually, you know, put
- 12 more people on the counter, then that reduces the wait
- 13 times.
- 14 Q. Okay. So am I understanding you that there was
- 15 a decision made that weekend hours would not actually
- 16 result in decreased wait times for people?
- 17 A. Yes.
- 18 Q. During those discussions, was there any
- 19 discussion that weekend hours might enable some people
- 20 to have access to drivers' license offices who had
- 21 difficulty getting there during the week?
- 22 A. Yeah. There was some discussion of that, but
- 23 just opening the hours on Saturday doesn't necessarily
- 24 ensure that they would have access. You know, I mean,
- 25 because then if everybody -- if the people who could

148

- 1 come Monday through Friday chose to come on Saturday,
- 2 then it also becomes a challenge.
- 3 Q. And in terms of offices that have -- was
- 4 labeled Late Day in the last column, do any of those of
- 5 offices stay open later than 6:00 p.m.?
- 6 A. No. We standardized our late day in hours.
- 7 Q. And why did you do that?
- 8 A. To eliminate customer confusion, and it also
- 9 shows that -- our analysis showed that the vast majority
- 10 of customers stopped coming at 6:00 or before.
- 11 Q. 6:00 or before?
- 12 A. (Witness nods head yes.)
- 13 Q. And in terms of standardization, it looks to me
- 14 like, from this chart, some of those late day offices
- 15 open at 8:00 and some open at 7:00. Is that true?
- 16 A. On the late day?
- 17 Q. Yes.
- 18 A. Yes. It does show that the El Paso offices do.
- 19 Q. Are those the only ones in the state that open
- 20 at 7:00?
- 21 A. To my knowledge.
- 22 Q. Are these hours continuous hours? Like, for
- 23 example, if it says 8:00 to 6:00, that means it's open
- 24 continuously 8:00 a.m. to 6:00 p.m.?
- 25 A. Yes.

149

1 Q. And the staff that are listed for each office,  
 2 would those staff be there, that number of staff would  
 3 be there during those hours, or are those --  
 4 A. That's the total number the FDEs assigned to  
 5 that office.  
 6 Q. I see. So it wouldn't mean that that number of  
 7 people would be working each day?  
 8 A. That's correct, or all day.  
 9 Q. Okay. Over the last two years, would you say  
 10 DPS has expanded the number of offices? I'm sorry. DPS  
 11 has expanded the number of drivers' license offices  
 12 around the state of Texas?  
 13 A. Yes. Well, I mean, we have opened new  
 14 scheduled offices. I mentioned the Mega Centers that  
 15 we're opening, but the Mega Centers are not open yet.  
 16 Q. Okay.  
 17 A. We are training staff as we speak and preparing  
 18 the facilities.  
 19 Q. So you've opened new offices, you're preparing  
 20 for the Mega Centers, and have you also closed offices?  
 21 A. Over the two years?  
 22 Q. Yeah.  
 23 A. Yes.  
 24 Q. And how would you say -- would you -- would you  
 25 say on average right now as compared to two years ago,

150

1 you're about the same, or would you say you have more  
 2 offices?  
 3 A. You know, to be perfectly honest, that's a --  
 4 that's a hard question to answer because the number of  
 5 offices that were actually open at that time is -- is  
 6 not clear to me.  
 7 Q. Do you know if during the consideration of  
 8 SB 14, you had approximately the same number of offices  
 9 open as you do now?  
 10 A. That's really the same situation, that the  
 11 number of offices that were actually open.  
 12 Q. If I told you that it was stated, I believe in  
 13 the public record, that there were 221 offices --  
 14 A. Okay.  
 15 Q. -- open at that time, would that sound about  
 16 right to you?  
 17 MR. McKENZIE: Objection to scope, but go  
 18 ahead and answer.  
 19 A. That -- that sounds like that's probably in the  
 20 ballpark. And if it was stated in public testimony or  
 21 provided in written documents to the legislature, then I  
 22 would believe that yes, that was verified, and then yes,  
 23 I could go back and answer your previous question that  
 24 it's approximately the same.  
 25 (Exhibit 842 marked for identification.)

151

1 Q. (By Ms. Maranzano) Okay. I'm showing what  
 2 we're marking as Deposition Exhibit 842. Does this  
 3 document look familiar to you?  
 4 A. Yes.  
 5 Q. What is this?  
 6 A. This is a copy of my weekly blog for April the  
 7 9th, 2012.  
 8 Q. Can you turn to page -- what's labeled at the  
 9 bottom as Texas 00250700? And do you see there's --  
 10 there's a map on that page?  
 11 A. Uh-huh.  
 12 Q. And underneath the map it says, "Some offices  
 13 might not have a high population in their area, but they  
 14 are the only office for 60-plus miles." Is that -- is  
 15 that still true today?  
 16 A. I thought 60-plus miles is a -- is an  
 17 estimate. I know when the Texas State did their  
 18 business intelligence study, the number that sticks in  
 19 my mind is 52 miles, but that's close to 60.  
 20 Q. So is it fair to say that if a person needed to  
 21 do -- needed to conduct business at the driver's license  
 22 office and was required to go in person, it's possible  
 23 they might have to travel a hundred miles round trip to  
 24 do so?  
 25 A. Yes, it's possible. It's also possible that

152

1 they have to do that, that they have to travel that same  
 2 distance to go to the doctor, shop at Walmart or those  
 3 kinds of things. I mean, Texas, the western portion of  
 4 Texas, you can go a long way, not just between driver  
 5 license offices, but between for a lot of basic  
 6 services.  
 7 Q. Right.  
 8 A. You're going to have to put that in  
 9 perspective.  
 10 Q. Uh-huh. But in terms of getting to a driver's  
 11 license office, which potentially, for some people,  
 12 might be a way to get the only possible ID that they  
 13 would need to get to vote, they might have to travel a  
 14 hundred miles round trip to get that; is that correct?  
 15 A. Yes.  
 16 Q. And in some parts of the state, I think people  
 17 might have to travel even farther than that?  
 18 A. I know that we provided you information with  
 19 the exact mileage on it. I didn't -- I didn't bring  
 20 that. I think a hundred miles is about -- was about  
 21 what was kind of round trip that I -- it's in my brain.  
 22 I can't quote you the exact mileage.  
 23 Q. You think a hundred miles is the farthest?  
 24 A. Round trip.  
 25 Q. Round trip?

153

1 A. It's -- I'm sorry. I don't remember --  
 2 Q. Okay.  
 3 A. -- the exact mileage.  
 4 (Exhibit 843 marked for identification.)  
 5 Q. (By Ms. Maranzano) I'm showing you what we're  
 6 marking as Deposition Exhibit 843. Can you take a look  
 7 at this and let me know if it looks familiar to you?  
 8 A. I believe that I've seen this or a draft of it.  
 9 Q. Okay. And what is this document?  
 10 A. It's a response to -- it's a letter from the  
 11 director of DPS to Senator Ellis answering questions  
 12 about Senate Bill 14.  
 13 Q. And can you look at the last page there on that  
 14 last bullet, it says, "Does DPS plan on organizing any  
 15 satellite locations, temporary or otherwise, in order to  
 16 provide Texans with opportunities to apply for an EIC  
 17 outside of normal DPS office locations?" And the  
 18 response is "No." Is that still your understanding of  
 19 DPS's plans?  
 20 A. Yes.  
 21 Q. And then do you see that the response also  
 22 says, "The law does exempt those persons who can prove  
 23 disability through Social Security Administration or  
 24 Veterans Administration documentation from presenting  
 25 additional identification"?

154

1 A. Yes.  
 2 Q. And would you agree that it would be more than  
 3 just individuals who are disabled who might have trouble  
 4 making to it a driver's license office during their  
 5 working hours?  
 6 MR. McKENZIE: Objection, speculation.  
 7 A. Well, I think that this was pointing out that  
 8 those people that are disabled --  
 9 Q. (By Ms. Maranzano) Uh-huh.  
 10 A. -- are not required to provide an EIC. I think  
 11 that's why that was specifically called out.  
 12 Q. But in terms of the question, which is about  
 13 whether or not DPS would provide opportunities for  
 14 individuals to apply for an EIC outside of the normal  
 15 DPS office hours, could you imagine that a person who  
 16 worked an hourly wage might have trouble making it to a  
 17 driver's license office during their working hours?  
 18 MR. McKENZIE: Objection, speculation.  
 19 You may answer.  
 20 A. I think that --  
 21 (Telephone beeping.)  
 22 Do you we need do anything about that?  
 23 MS. MARANZANO: Can we off the record for  
 24 a second?  
 25 (Recess from 4:17 p.m. to 4:18 p.m.)

155

1 MS. MARANZANO: Back on the record.  
 2 A. My thought is that people that work for an  
 3 hourly wage may not necessarily work 8:00 to 5:00.  
 4 Q. (By Ms. Maranzano) And what's that based on?  
 5 A. Well, I mean, thinking of, you know, fast food  
 6 workers or something like that, that they wouldn't  
 7 necessarily just work 8:00 to 5:00.  
 8 Q. So you're not concerned about individuals who  
 9 work for an hourly wage having trouble making it to a  
 10 driver's license office?  
 11 MR. McKENZIE: Objection, mischaracterizes  
 12 the witness's testimony, but you may answer.  
 13 A. I think that we are trying to provide the level  
 14 of service that will enable all of our customers to get  
 15 in and out as quickly as possible.  
 16 Q. (By Ms. Maranzano) And can you imagine that a  
 17 person who doesn't have access to a vehicle might also  
 18 have trouble making to it a driver's license office  
 19 during their business hours?  
 20 MR. McKENZIE: Objection, speculation, but  
 21 you may answer.  
 22 A. Many of our offices are located on bus lines.  
 23 It's a criteria that we use when we're looking to locate  
 24 an office.  
 25 Q. (By Ms. Maranzano) Do you know how many of your

156

1 offices are located on bus lines?  
 2 A. I do not know off the top of my head, no,  
 3 ma'am. But I do know that in the search for the Mega  
 4 Center locations, which is the office locations that I'm  
 5 most familiar with, that that was a specific criteria  
 6 that was used in ranking locations.  
 7 Q. So is it fair to say it might take somebody a  
 8 longer amount of time to get to an office by public  
 9 transportation than it would by car?  
 10 MR. McKENZIE: Objection, speculation, but  
 11 you may answer.  
 12 A. I don't think I'm able to answer that question.  
 13 Q. (By Ms. Maranzano) Okay.  
 14 A. There's too many variables.  
 15 Q. Are you aware of whether SB 14 requires  
 16 employers to give paid leave for somebody to obtain an  
 17 identification?  
 18 A. I don't recall anything in Senate Bill 14 that  
 19 addresses that at all.  
 20 Q. Can you look at the previous page for me, and  
 21 one of the bullets that's about part way through the  
 22 page -- actually, it towards the bottom, it says,  
 23 "Recent press reports indicate that a top official in  
 24 the Wisconsin Department of Transportation instructed  
 25 staff at the Division of Motor Vehicle's services

157

1 centers not to tell members of the public that they can  
 2 obtain photo identification cards free of charge unless  
 3 they know to ask for it. Will DPS be taking a similar  
 4 approach?" And it says, "No, it will not."  
 5 Now, didn't we look earlier at a document  
 6 that said somebody had to basically ask for the ID for  
 7 voting in order to be told about the -- in order to be  
 8 given an EIC application?  
 9 MR. McKENZIE: Objection, I think it  
 10 mischaracterizes the exhibit, but you may go ahead and  
 11 answer.  
 12 Q. (By Ms. Maranzano) And for reference, I am  
 13 referring to the document that we looked at earlier,  
 14 which we labeled Exhibit 834, and it was Question Number  
 15 4, "What if the person tells you they do not have money  
 16 to pay for an identification or a driver's license, can  
 17 we inform them of the election certificate?" "No, the  
 18 person should let you know they need a photo ID to  
 19 vote."  
 20 A. Well, I think ours says, if they said -- you  
 21 know, if they said something about voting, then we would  
 22 -- we would tell them that.  
 23 Q. So is it your testimony that a person needs to  
 24 basically say the word "voting" in order to --  
 25 A. They don't need necessarily need to use the

158

1 word "voting," but they -- they can't just come in and  
 2 say, "I want an ID card," and we give them an  
 3 application for an Election Identification Certificate,  
 4 because that's says it's specifically not viable for  
 5 identification.  
 6 Q. And so do you agree with the response to this  
 7 letter, you don't -- you don't see what DPS is doing is  
 8 requiring individuals to know that they have to ask for  
 9 the ID? Is that fair?  
 10 A. I'm sorry. One more time.  
 11 Q. I'm wondering if what it says in this letter is  
 12 that DPS seems to be responding by saying it's not going  
 13 to require individuals to know that they have to ask for  
 14 the ID, but it sounds to me like you're actually saying  
 15 they do need to know, they have to ask for it, so I'm  
 16 wondering how you reconcile those?  
 17 A. There appears to be some conflict.  
 18 Q. And do you know which -- which policy DPS will  
 19 be following?  
 20 A. Well, I think we would need to go back and look  
 21 at our training documents, based upon the correspondence  
 22 that the director sent, and reconcile them.  
 23 Q. So you may be updating your training documents?  
 24 THE WITNESS: In fact -- can I borrow this  
 25 pen?

159

1 MR. McKENZIE: Yeah, go for it. Is that  
 2 the exhibit?  
 3 THE WITNESS: Sorry, that's the  
 4 official.  
 5 MR. McKENZIE: You can write it on mine.  
 6 Actually, why don't you mark -- here, I don't have any  
 7 markings on mine.  
 8 THE WITNESS: Here, can we just move the  
 9 tag.  
 10 MR. McKENZIE: Yeah, I don't have any  
 11 markings on mine, so we can put an exhibit tag on --  
 12 THE WITNESS: Can we put 834 on his, since  
 13 this won't do me any good if I -- if I marked it on  
 14 something that I can't take with me. I'm sorry. It's  
 15 834, and then you can rip this one off of here. I  
 16 apologize.  
 17 Q. (By Ms. Maranzano) And how many drivers'  
 18 license offices do you think people would need to travel  
 19 50 or more miles to get to them?  
 20 A. I don't know.  
 21 Q. Let me -- let me phrase it this way: How many  
 22 drivers' license offices serve a number of people, maybe  
 23 half of the clients that are traveling 50 or more miles  
 24 to get there?  
 25 A. I have no way to be able to answer that

160

1 question.  
 2 Q. Isn't this part of what you analyze when you  
 3 look at what drivers' license offices to close?  
 4 A. But you just asked me how many offices people  
 5 drive 50 or more miles to get there.  
 6 Q. How many offices serve clients who are  
 7 traveling great distances to get there?  
 8 MR. McKENZIE: Objection, speculation.  
 9 A. I don't have any way to answer that. I'm  
 10 sorry.  
 11 Q. (By Ms. Maranzano) Do you have an estimate?  
 12 A. No, ma'am.  
 13 Q. Well, what geographic parts of the state are we  
 14 talking about in terms of drivers' license offices that  
 15 serve clients who are traveling great distances to, to  
 16 get to the office?  
 17 A. Well, okay. So first, "great" is -- is a term  
 18 that's unclear to me what --  
 19 Q. Uh-huh.  
 20 A. -- what exactly is meant by that. I think  
 21 generally the western portion of the state is -- has  
 22 lesser population, and so therefore, it's -- it's less  
 23 sparsely populated. I think there's a county in Texas  
 24 that has 80 people in the county, and yet it's the --  
 25 you know, the size of Rhode Island or something like

<p style="text-align: center;">161</p> <p>1 that.</p> <p>2 Q. And when you say the western part of the state,</p> <p>3 what counties are you referring to?</p> <p>4 A. I think generally you could say the area west</p> <p>5 of I-35, although that's a very, very -- I mean, if</p> <p>6 you're just looking for some kind of demarcation,</p> <p>7 Austin, where we are now, is actually west. Right where</p> <p>8 we are right now is actually west of I-35, and so this</p> <p>9 is clearly a populated area of the state. But it's the</p> <p>10 western portion. I can't name the counties.</p> <p>11 Q. Do you know about how many counties we're</p> <p>12 talking about?</p> <p>13 A. I'm sorry, I don't.</p> <p>14 Q. Approximately?</p> <p>15 A. I don't. I mean, you can look at a population</p> <p>16 map of the state.</p> <p>17 Q. But actually, what I'm -- what I'm interested</p> <p>18 is not -- is not the population of the counties, but in</p> <p>19 terms of drivers' license offices and the clients that</p> <p>20 they're serving. That's just around the same page about</p> <p>21 what my questions are referring to.</p> <p>22 A. Okay.</p> <p>23 Q. And can you tell me particular offices that you</p> <p>24 think serve clients who travel 40 or 50 miles to get</p> <p>25 there?</p>	<p style="text-align: center;">163</p> <p>1 in the western part of the state, do they usually have</p> <p>2 fewer employees working there?</p> <p>3 A. Than the offices in the western portion of the</p> <p>4 state? Yes, I would say. Our only existing Mega Center</p> <p>5 is in Houston, for example. A Mega Center has 25 or</p> <p>6 more employees. There are no -- actually, what would be</p> <p>7 more meaningful is to say there are no plans to open</p> <p>8 Mega Centers in the western portion of the state,</p> <p>9 because the population simply does not warrant that</p> <p>10 level of employees. The population and therefore the</p> <p>11 number of transactions.</p> <p>12 Q. Okay. Can you turn back to Exhibit 843 for me,</p> <p>13 and can you look at the first page? And do you see the</p> <p>14 last bullet on the first page talks about wait times?</p> <p>15 And do you see that the DPS's response indicates that</p> <p>16 wait times can be as long as three hours in the</p> <p>17 metropolitan areas?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. And would you say that's accurate?</p> <p>20 A. I think that's accurate during our busiest</p> <p>21 months of the year.</p> <p>22 Q. And what are your busiest months of the year?</p> <p>23 A. The summer and other times when students are</p> <p>24 out of school, so spring break, Christmas break.</p> <p>25 Q. Does DPS receive numerous complaints about the</p>
<p style="text-align: center;">162</p> <p>1 MR. McKENZIE: Objection, speculation.</p> <p>2 Asked and answered. But you may answer, if you can.</p> <p>3 A. Well, so I'll tell you about Angie in Floydada,</p> <p>4 since I've told almost everybody about Angie in</p> <p>5 Floydada. Floydada is a small little town in the</p> <p>6 vicinity of Lubbock, and I've gone out and visited a lot</p> <p>7 of our offices. It happens to be a one-person office.</p> <p>8 It actually would fit under the definition of a</p> <p>9 scheduled office. And so Angie and I had a lovely visit</p> <p>10 for approximately two hours, and Angie helped two</p> <p>11 customers. And, you know, I don't know exactly how far</p> <p>12 -- I believe one of the customers, I recall the</p> <p>13 discussion was she had come from Lubbock. I don't know</p> <p>14 how far Lubbock. I don't know exactly how many miles</p> <p>15 Lubbock was from Floydada, but that had been the</p> <p>16 customer's choice.</p> <p>17 Q. (By Ms. Maranzano) And, you know, just to be</p> <p>18 clear, I'm not as interested in -- in sort of anecdotal</p> <p>19 evidence as I am interested in more, you know, your</p> <p>20 knowledge based on your position as the assistant</p> <p>21 director of the drivers' license services and your</p> <p>22 knowledge coming here to testify today about the offices</p> <p>23 that are going to be providing Election Identification</p> <p>24 Certificates.</p> <p>25 So let me ask you this: Are the offices</p>	<p style="text-align: center;">164</p> <p>1 amount of time it takes to receive a driver's license?</p> <p>2 A. We do receive complaints about that, yes.</p> <p>3 Q. Do you receive complaints from people who are</p> <p>4 unable to wait the requisite amount of time needed to</p> <p>5 obtain a driver's license or ID?</p> <p>6 A. Yeah. We might receive some. I think really</p> <p>7 the complaints are more likely to come from people who</p> <p>8 don't want to have to wait.</p> <p>9 Q. And what do you mean by that?</p> <p>10 A. Well, it's not how I would chose to spend my</p> <p>11 time. So there's just a higher level of frustration,</p> <p>12 the -- the expectation. So I can't tell you that the</p> <p>13 majority of the complaints that we receive about wait</p> <p>14 time say, "I was unable to wait." They said, "I don't</p> <p>15 want to wait. I didn't like having to wait."</p> <p>16 Q. Well, it's probably fair to say the vast</p> <p>17 majority of people don't want to wait at a driver's</p> <p>18 license office; fair?</p> <p>19 A. Yes. I think that's a very fair statement.</p> <p>20 Q. Are there any regions of the state that are</p> <p>21 particularly notable for having long wait times at</p> <p>22 drivers license offices?</p> <p>23 A. I think Houston, the Metroplex area offices</p> <p>24 are -- frequently have longer wait times.</p> <p>25 Q. And I'm sorry, the Metroplex area offices are</p>



165

1 within Houston?

2 A. No, I'm sorry. The Metroplex is generally a  
3 term that refers to Dallas-Fort Worth metropolitan  
4 statistical area.

5 Q. Thank you.

6 A. I'm sorry. Texas jargon.

7 MR. McKENZIE: Yeah. It's where I'm from,  
8 so I know.

9 Q. (By Ms. Maranzano) Are there particular offices  
10 within those areas that are notable for having long wait  
11 times?

12 A. I think that it varies depending upon if  
13 there's a couple of people out sick or on vacation that  
14 day, that has an influence. If there's a surge of  
15 customers that happen to all hit at the same time, all  
16 of these things influence our wait times.

17 Q. Okay. But are there any -- just apart from,  
18 sort of, extraordinary circumstances, somebody being out  
19 sick or a rush of people, are there any offices that  
20 just generally are sort of more known for having extreme  
21 wait times?

22 A. Well, I think as I mentioned previously, the --  
23 the offices in Houston and the Metroplex, the Dallas-  
24 Fort Worth area, tend to have longer wait times.

25 Q. Okay. So just to be clear, you're talking

166

1 about all of the offices in the Houston and Dallas-Fort  
2 Worth area?

3 A. Well, without going through and -- and naming  
4 specific offices, those are -- that's a general -- a  
5 generally safe assumption.

6 Q. Okay.

7 (Exhibit 844 marked for identification.)

8 Q. (By Ms. Maranzano) Okay. I'm showing you what  
9 we're marking as Deposition Exhibit 844. Can you take a  
10 look at this and let me know if it looks familiar to  
11 you?

12 A. Yes, it does.

13 Q. And what is this?

14 A. This is a list of the average wait times in our  
15 larger offices for May of 2012.

16 Q. And why was this compiled?

17 A. At your request.

18 Q. Who is you?

19 A. I'm sorry. We -- we compiled it in request  
20 to -- or in preparation for the deposition.

21 Q. Ah, I see. So this was compiled -- this was a  
22 study of the offices in large metropolitan areas; is  
23 that correct? I'm sorry. At the top it says Large  
24 Offices. What do you mean by that?

25 A. Well, it's our larger offices that have the

167

1 queuing system, and the queuing system is what was --  
2 where -- how we were able to get this information about  
3 the average wait time per person.

4 Q. Okay. Can you tell me what the queuing system  
5 is, please?

6 A. The queuing system is something that we use to  
7 be able to mark when our customers come in to the office  
8 and when their transaction is complete, so we have an  
9 understanding of their wait times and the actual  
10 processing time, the time that it took at the counter to  
11 complete their transaction.

12 Q. Okay. And does it have anything to do with --  
13 is there anything about the queuing system that makes it  
14 -- other than what you've just talked about, that makes  
15 it different from other offices?

16 A. I'm sorry. I don't understand that question.

17 Q. Are people -- are people who go into an office  
18 that has queuing system, are they separated into queues  
19 depending on what service they are seeking?

20 A. Yes, they are.

21 Q. And does that happen at other offices, too?

22 A. Typically, at smaller offices, you know,  
23 because there's -- I can't remember the exact number of  
24 different types of transactions, but there may be 12  
25 different types of transactions, and in a two-person

168

1 office, it really isn't feasible to do that.

2 Q. Okay. And the office names on the left-hand  
3 side --

4 A. Uh-huh.

5 Q. -- are those -- are those names each  
6 representing one office or more than one office?

7 A. That represents one office.

8 Q. Okay.

9 A. So Arlington, for example, is -- would be  
10 considered in the Metroplex.

11 Q. Okay. And so these wait times, they were all  
12 for May 2012, correct?

13 A. Yes, ma'am.

14 Q. And would you say these are about average wait  
15 times for these offices?

16 A. I would say they were average wait times for  
17 the month of May 2012. It really varies. I don't mean  
18 to be flip, but it varies a lot, depending upon the  
19 number of customers, depending upon what else is going  
20 on. So I feel confident saying this -- these were the  
21 average wait times for this month for these offices.

22 Q. Okay. And there are no -- I mean, when you say  
23 it really depends on the number of customers and what  
24 else is going on, are there patterns in terms of the  
25 number of customers who come in to offices?

169

1 MR. MCKENZIE: Objection, vague, but you  
2 can answer.  
3 Q. (By Ms. Maranzano) I guess, let me rephrase. I  
4 guess what I'm interested in finding out are some of the  
5 trends in waiting times. Can you tell me about if these  
6 are indicative of, sort of, on average, kind of the  
7 trend of the waiting times, say, in Arlington office,  
8 that, you know, an average might be about 54 minutes?  
9 Is that --  
10 A. Well, the way I look at these -- I look at the  
11 wait times for offices every month. I don't commit them  
12 to memory. I would say that these are not -- there was  
13 nothing on here that I just went, oh, my gosh, that's  
14 seems really strange. I am especially impressed that  
15 Laredo has 17 minute average wait time. I know that  
16 they are typically below 30, but I -- I did not have it  
17 in my brain that they were 17 minutes to complete a  
18 transaction.  
19 Q. Uh-huh. And I know you said certain times of  
20 the year were busier than others and you indicated a  
21 couple. Do you think that on average over -- over a  
22 year, there's a pretty wide fluctuation in terms of wait  
23 times at an office?  
24 A. I do think that there is a variation in wait  
25 times, yes.

170

1 Q. A variation of a few minutes or more than that?  
2 A. It -- it can swing. I mean, if you look at,  
3 you know, a day, it can swing quite dramatically.  
4 Q. In any given day?  
5 A. It can swing dramatically in a day. It can  
6 swing dramatically from Monday to Tuesday. It can swing  
7 dramatically from -- I mean, yes, it can swing quite  
8 dramatically. There's a number of different factors  
9 that influence the wait time.  
10 Q. And what -- well, and you -- okay. What are  
11 those factors? You've told me a couple of them. You  
12 said a rush of people. You said if somebody is out  
13 sick. Anything else?  
14 A. Those -- those are two of the biggest.  
15 Q. Okay. Are there times of the day that are  
16 particularly -- when the wait time might be increased on  
17 average?  
18 A. Well, lots of times, we see lunch times are  
19 challenging because we all kind of make the assumption  
20 that, "oh, I'll just sneak over there. Nobody else will  
21 have gotten that idea. And I'll be able to get in."  
22 And so there's an increase in customers. And there's  
23 actually a decrease, typically, in a lot of our offices,  
24 because our employees have to eat. So we've tried to,  
25 for example, do other things to mitigate that problem,

171

1 like having scheduled part-time employees that only come  
2 in during the lunch hours. And so that -- those are  
3 steps that we've tried to take to, to reduce that  
4 particular typical peak.  
5 Q. And can you just glance back at Exhibit 843 for  
6 me, and -- and in that bullet that we were talking about  
7 on the first page --  
8 A. Uh-huh.  
9 Q. -- there's a sentence there that says,  
10 "Customers in these offices spend an average of 50  
11 minutes from the time their transaction was entered into  
12 the queuing system until it was completed. This does  
13 not include the time someone would have to wait in line  
14 before they could be entered into the queuing system."  
15 A. Uh-huh.  
16 Q. Are these times here that are represented in  
17 this far right-hand corner also basically measuring the  
18 time the person enters into the queuing system until  
19 their transaction is complete?  
20 A. Yes, ma'am.  
21 Q. So it's also not including the time someone  
22 waits before they entered into the queuing system?  
23 A. That's correct.  
24 Q. Okay. Can you tell me every office on this  
25 list that you think has a lower wait time than what's

172

1 listed here on average?  
2 MR. MCKENZIE: Objection, speculation, but  
3 you may answer.  
4 A. No.  
5 Q. (By Ms. Maranzano) Why not? Because you don't  
6 know?  
7 A. Yeah, because what you're asking me to do is to  
8 go down and say, I believe Arlington's average wait time  
9 is 54 minutes.  
10 Q. I'm asking you to identify every office on this  
11 list that would have a lower wait time than what's  
12 listed here as the average wait time for May.  
13 A. Well, I can tell you that I was a little  
14 surprised that Garland had an hour and 22 minutes. That  
15 -- that was the one that kind of, like, I went, huh,  
16 wow.  
17 Q. And why did that surprise you?  
18 A. Because Garland just doesn't -- isn't on the  
19 list of offices that seem to have issues. Pat Booker  
20 also has -- had very, very low wait times. We -- we  
21 educated our office supervisors about the queuing system  
22 and how to use it and how to reduce the wait time, and  
23 Pat Booker was one of the examples of an office where we  
24 -- we really pointed that out as an example to say, wow,  
25 this supervisor gets how to use the queuing system. So

173

1 that just kind of surprised me a little bit.  
 2 Q. Uh-huh. Anything else?  
 3 A. Those are the two that kind of caught my  
 4 attention.  
 5 Q. Would you describe these wait times as the  
 6 minimum average wait times?  
 7 A. I would describe them as average.  
 8 Q. Any others that you think have a lower wait  
 9 time than what's listed?  
 10 MR. McKENZIE: The same speculation  
 11 objection.  
 12 A. Those -- those were the two. I haven't looked  
 13 at every office, but those are the two that -- in  
 14 looking over the list.  
 15 Q. Okay. But just in looking like right now, if  
 16 you could just look through the list and make sure there  
 17 aren't any others.  
 18 A. And the question was, are there any others  
 19 that --  
 20 Q. That you think would have a lower average wait  
 21 time than what is listed here?  
 22 MR. McKENZIE: Objection, asked and  
 23 answered and speculation, but...  
 24 A. No.  
 25 Q. (By Ms. Maranzano) Okay.

174

1 (Exhibit 845 marked for identification.)  
 2 Q. (By Ms. Maranzano) Okay. I'm showing you what  
 3 we marked as Deposition Exhibit --  
 4 A. 845.  
 5 Q. Thank you. 845. Does this look familiar to  
 6 you?  
 7 A. Yes, ma'am, it does.  
 8 Q. And what is this?  
 9 A. This is a report that was submitted to the  
 10 legislature in response to questions that said how can  
 11 we reduce the -- the wait time for our customers.  
 12 Q. And this was submitted to the legislature in --  
 13 well, the date on this publication is February 28th,  
 14 2011, correct?  
 15 A. Yes, ma'am.  
 16 Q. And when was it submitted to the legislature?  
 17 A. On or about February 28th of 2011.  
 18 Q. Can you look at first page, the Executive  
 19 Summary, and the first sentence, it says, "Getting a  
 20 driver's license in Texas should not a painful  
 21 experience." Is that correct?  
 22 A. Yes.  
 23 Q. And then the next sentence says, "The typical  
 24 driver license customer complaint is about uncomfortable  
 25 long wait times before they get to the counter to be

175

1 helped." Would you say that's still the typical  
 2 customer complaint?  
 3 A. Yes.  
 4 Q. And the last sentence of that paragraph talks  
 5 about the state's population has grown and the length of  
 6 time that's required to process increasingly complex  
 7 driver license transactions. What -- what is meant by  
 8 that increasingly complex driver license transactions?  
 9 A. We, as part of a driver license transaction, we  
 10 ask people things like if they want to register to vote,  
 11 if they want to do an organ donation, if they want to  
 12 register for Selective Service, if -- you know, we -- we  
 13 look at documents, more documents than we did  
 14 historically.  
 15 Q. Okay. Anything else?  
 16 A. (Witness shakes head no.)  
 17 Q. Can you look at Page 6 for me? Do you see  
 18 that chart on Page 6?  
 19 A. Uh-huh.  
 20 Q. And it has an arrow that says Additional  
 21 Mandates, and then another arrow that says Population  
 22 Growth.  
 23 A. Uh-huh.  
 24 Q. And the variable says Service Gap?  
 25 A. Uh-huh.

176

1 Q. And underneath that, it talks about "Additional  
 2 mandates include state and federal requirements placed  
 3 upon driver license division that impact transaction  
 4 times and ultimately wait times?"  
 5 A. Uh-huh.  
 6 Q. Anything other than what you've testified about  
 7 that you consider an additional mandate?  
 8 A. Those are the primary ones. The credentialing  
 9 requirements also.  
 10 Q. And what -- what is that?  
 11 A. It's an offshoot of the Federal Real ID Act.  
 12 Q. And what does it require?  
 13 A. It requires us to see the birth certificate, to  
 14 examine all the documents from someone who is here  
 15 temporarily.  
 16 Q. Would you consider the EIC to be another  
 17 mandate put on the driver's license division?  
 18 A. Yeah. It's affiliated with voter registration,  
 19 but...  
 20 Q. And do you think that's going to have any  
 21 impact on what's labeled in this demographic as the  
 22 service gap?  
 23 A. You know, it's really hard to know. As we  
 24 pointed out in the -- the fiscal impact statement for  
 25 the rules, it's -- it's hard to know how many -- what

177

1 the demand is going to -- how the demand is going to  
2 change for EICs.

3 Q. Has the Division made any plans that would  
4 require it to come up with some sort of estimates for  
5 how many people are going to be applying for an EIC?

6 A. I think we have to service any and all  
7 customers, and it's -- you know, there's no way to  
8 really know.

9 Q. Do you think it's going to impact the  
10 Division's ability to provide quality services to its  
11 customers?

12 A. I don't really think so.

13 Q. Why not? Or what -- what are you basing -- and  
14 what are you basing that opinion on?

15 A. Well, I think the fact that this report was  
16 actually what led to the addition of 266 employees and  
17 new offices. And, you know, I'm just -- you know, I  
18 don't -- I don't -- personally don't think that there is  
19 going to be that many people.

20 Q. And what are you basing that on?

21 A. It's really irrelevant. Gut feel. So that's  
22 -- officially, I do not have any estimate.

23 Q. And is your gut feel because you think most  
24 people have one of the forms of required identification  
25 under SB 14?

178

1 MR. McKENZIE: Objection, speculation, but  
2 you may answer it.

3 A. Officially, I don't have any estimate. You  
4 know, I don't know. We really don't know. We don't  
5 know how to estimate this. We issue driver licenses and  
6 identification cards, and the Secretary of State does  
7 voter issues. I do not claim any expertise in voter  
8 issues.

9 Q. (By Ms. Maranzano) Right. But now, you're also  
10 going to be issuing a form of ID for voting, correct?

11 A. Yes, to everyone that comes in and does not  
12 have another form of ID and qualifies.

13 Q. Is it fair to say that your -- your gut feel  
14 did not impact any of your planning in terms of the EIC  
15 program?

16 A. My gut feel is my gut feel. It does not have  
17 anything to do with what -- we are -- we are prepared  
18 and ready to issue Election Identification Certificates  
19 to everyone that comes and requests them and qualifies  
20 for them.

21 Q. Can you turn to Page 9 of this report for me,  
22 and the last two paragraphs.

23 A. Uh-huh.

24 Q. That's talking about the employee environment.  
25 It mentions that the salary of a driver's license

179

1 employee is 12 dollars per hour. Is that -- and that  
2 was -- well, it looks like that was probably in January  
3 of 2011.

4 A. Uh-huh.

5 Q. Is that -- has that gone up since that time?

6 A. Yes, ma'am, it has.

7 Q. And what is the salary now?

8 A. I don't know the hourly rate. We were -- as a  
9 result of this report, we did get funds to reclassify  
10 our employees, and they -- they are paid a higher rate.

11 Q. You reclassified them as what?

12 A. They are -- actually, their title changed as  
13 part of the reclassification, but with that  
14 reclassification came a salary increase.

15 Q. Okay. And below that paragraph in the last  
16 paragraph it says, "Paying employees a salary  
17 commensurate with their responsibilities will allow DPS  
18 to recruit employees with more developed skills." Do  
19 you think that has occurred?

20 A. Yes, I do.

21 Q. And what sort of skills have you been able to  
22 -- to recruit employees with or what kind of skills do  
23 the employees that you're recruiting have?

24 A. Well, the -- the new job description is  
25 actually called a customer service representative. It

180

1 used to be an administrative assistant, so there was  
2 some confusion. Now it's very clear to employees that  
3 we're looking for customer service skills. It's not a  
4 background kind of filing job. And so, you know, that  
5 -- that's probably one of the primary things.

6 Q. Do you look for employees who speak other  
7 languages?

8 A. We do not recruit for that. We do have many  
9 employees that speak other languages.

10 Q. Do you know how many employees you have who  
11 speak fluent Spanish?

12 A. I don't know that at all. We don't have a way  
13 to -- to track that or to -- you know, we don't have a  
14 reason.

15 Q. It's not something that you look for in terms  
16 of employees who are going to be serving the public in  
17 any of your drivers' license offices?

18 A. We do not screen for that, no, ma'am. Our  
19 employees tend to represent the population that's in  
20 that community.

21 Q. Is there a reason that you wouldn't look for  
22 that in terms of hiring an employee for a region where  
23 there might be a lot of Spanish speakers?

24 A. It's not part of the screening. If you make it  
25 part of the screening, you have to typically pay

181

1 additional. Many people speak lots of languages.  
 2 Q. And when you say you have to pay additional, do  
 3 you mean you have to pay employees additional?  
 4 A. Uh-huh.  
 5 Q. So you would have to increase the salary if  
 6 you --  
 7 A. Uh-huh. And we are not authorized to do that  
 8 in the driver license division.  
 9 Q. Okay.  
 10 Can we mark this?  
 11 (Exhibit 846 marked for identification.)  
 12 Q. (By Ms. Maranzano) Do you recognize this  
 13 document? I'm sorry. I'm showing you what we marked as  
 14 Deposition Exhibit 845 -- 846, I apologize. Do you  
 15 recognize this?  
 16 A. It appears to be a subset or a -- no, I don't.  
 17 Q. You don't recognize this document?  
 18 A. I mean, you know, if you looked and you  
 19 compared it to the previous document. I'm trying to  
 20 remember.  
 21 Q. Is this a draft of another report for the  
 22 legislature?  
 23 A. That's what it appears to be.  
 24 Q. And you don't think you've seen this before?  
 25 A. No.

182

1 Q. Can you look at the first page for me, which is  
 2 -- actually, it's Page 3. And do you see in the -- in  
 3 the Executive Summary, the second sentence. It sounds  
 4 like the other reports, that the typical driver's  
 5 license customer complaint is about uncomfortable long  
 6 wait times before they get to the counter to be helped.  
 7 Is it fair to say that in March of 2012,  
 8 that's still a pretty common complaint from driver's  
 9 license customers?  
 10 A. Yes. The offices, the new Mega Centers and the  
 11 new staffing have not been -- the new offices have not  
 12 been opened. We're hiring the -- I mean, we're training  
 13 to the staff now. So yes, in March of 2012, we are  
 14 still getting complaints.  
 15 Q. And do you see the last sentence of that  
 16 paragraph says, "The Mega Centers attack the heart of  
 17 this population growth, but does little for the outlying  
 18 areas with similar problems." Would you say that's  
 19 correct?  
 20 A. Well, I think that -- I'm sorry, which -- which  
 21 -- the first?  
 22 Q. The last.  
 23 A. The last? I think the resources were applied  
 24 where there was the most urgent need. Not every single  
 25 one of the 266 employees are actually staffing the Mega

183

1 Centers.  
 2 Q. Okay. So does that mean you disagree with this  
 3 sentence?  
 4 A. Well, this sentence, the way it's written.  
 5 Q. Uh-huh.  
 6 A. "Does little for the outlying areas with  
 7 similar problems." So yes, sure, I'll agree.  
 8 Q. Can you look at page --  
 9 A. I don't think the problems are as severe. The  
 10 under served populations were primarily in the heavily-  
 11 populated areas. In, for example, Lubbock there's no  
 12 Mega Center going in there, but they tend to have spikes  
 13 in wait times, whereas in the heavily-populated areas,  
 14 they tend to have pretty consistent wait -- longer wait  
 15 times.  
 16 Q. Okay.  
 17 A. So I think that -- I really think that that  
 18 sentence is not well worded.  
 19 Q. And when you say the under served are primarily  
 20 in the areas with the Mega Centers, how are you defining  
 21 under served?  
 22 A. They have a longer wait time.  
 23 Q. Okay. And that wouldn't account for travel  
 24 time, correct?  
 25 A. Right. My sense is that customers that live in

184

1 rural areas are not going to town exclusively to get a  
 2 driver license or an identification card or even an  
 3 election certificate. They're taking care of other  
 4 business that they need to do at the same time.  
 5 Q. What's that sense based on?  
 6 A. Anecdotal information from people that live in  
 7 rural areas.  
 8 Q. Okay. Can you look at Page 9 for me? Do you  
 9 see there's another chart on this page that has, again,  
 10 mandates and population and a service gap? Do you see  
 11 that chart?  
 12 A. Uh-huh.  
 13 Q. And underneath that chart, do you see there's a  
 14 write-up which says at the end -- well, it's start out  
 15 by talking about additional mandates, and then at the  
 16 end it says, "Need to add 2011"?  
 17 A. Uh-huh.  
 18 Q. Do you know what -- what would be considered  
 19 additional mandates that would need to be added from  
 20 2011?  
 21 A. I think what it's saying -- this chart is  
 22 exactly a copy of the one that's in Exhibit 845.  
 23 Q. Uh-huh.  
 24 A. And I think what they're saying is they needed  
 25 to add the population for 2011.

<p style="text-align: center;">189</p> <p>1 A. Well, you'd -- you'd have to look at the -- the</p> <p>2 regional --</p> <p>3 Q. Uh-huh.</p> <p>4 A. -- designation, and then I have to find the key</p> <p>5 to find out what the color was. I'm sorry. I'm not</p> <p>6 able to tell from this document.</p> <p>7 Q. Do you know, just from your knowledge of</p> <p>8 working in the driver's license division, that there's a</p> <p>9 particular area of the state where more offices have</p> <p>10 closed than in other areas of the state?</p> <p>11 A. You know, I really don't, because so many of</p> <p>12 these offices were closed before -- before I ever got</p> <p>13 there, so they were never offices to me, if that makes</p> <p>14 any sense. They -- they were on some original list of</p> <p>15 offices, but yet they were never -- I mean, you know,</p> <p>16 when -- when there hasn't been a presence since June of</p> <p>17 '05, you know, at some point in time, we probably should</p> <p>18 take it off the list.</p> <p>19 So if you look, for example, on the second</p> <p>20 page --</p> <p>21 Q. Uh-huh.</p> <p>22 A. -- and you go down and look at Franklin.</p> <p>23 Q. Uh-huh.</p> <p>24 A. That was June of '05.</p> <p>25 Q. Uh-huh.</p>	<p style="text-align: center;">191</p> <p>1 A. Well, probably the June '07. I mean, '05 and</p> <p>2 '07 seem like that they're not -- not viable for a</p> <p>3 discussion, really, in my mind.</p> <p>4 Q. Uh-huh. Any others?</p> <p>5 A. I don't -- I don't think so. I mean, those are</p> <p>6 the ones that stand out to me.</p> <p>7 Q. Does DPS have any plans to extend the hours of</p> <p>8 their offices -- of the drivers' license offices in</p> <p>9 months leading up to the 2012 election?</p> <p>10 A. At this moment, there are no plans to extend</p> <p>11 the office hours.</p> <p>12 Q. And if the EIC program were to be implemented,</p> <p>13 would that impact that decision?</p> <p>14 A. It might.</p> <p>15 Q. Have there been discussions of that?</p> <p>16 A. There have been discussions of extending the</p> <p>17 office hours.</p> <p>18 Q. In the months leading up to the 2012 election?</p> <p>19 A. Of extending the office hours. It wasn't -- it</p> <p>20 wasn't centered around --</p> <p>21 Q. Uh-huh.</p> <p>22 A. -- election certificates.</p> <p>23 Q. And what -- do you know what those extended</p> <p>24 hours would look like?</p> <p>25 A. There have been different proposals</p>
<p style="text-align: center;">190</p> <p>1 A. You know.</p> <p>2 Q. But if you flip through the dates, though,</p> <p>3 isn't it -- doesn't it seem as though most of the dates</p> <p>4 that these were closed are '09, I assume 2009, 2010 and</p> <p>5 2011?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And when you say many of these should be taken</p> <p>8 off the list, which ones are you talking about?</p> <p>9 A. Well, I mean, to me, if you hadn't had an</p> <p>10 office open since June of '05, does it really belong on</p> <p>11 the list of driver license offices? You know.</p> <p>12 Q. Any others that you think should be taken off</p> <p>13 the list?</p> <p>14 A. Well, if it was unknown and there were people</p> <p>15 that have historical knowledge and nobody has a clue,</p> <p>16 that may also be another one. And the way this is</p> <p>17 printed out, it's really hard to kind of for me to --</p> <p>18 Q. Uh-huh.</p> <p>19 A. And I don't recognize all the locations that</p> <p>20 just -- you know, it's like, oh, I can't tell you which</p> <p>21 office is in which region with certainty. I can't go</p> <p>22 down the list and tell you that. The way it's kind of</p> <p>23 printed out, it's hard to --</p> <p>24 Q. Uh-huh. Any others that you think should be</p> <p>25 taken off this list?</p>	<p style="text-align: center;">192</p> <p>1 considered. One was to stay open Tuesday and Thursday</p> <p>2 until 7:00 and be open on Saturday from 9:00 to 3:00.</p> <p>3 The other proposal that was considered was to be open</p> <p>4 7:30 to 6:00 Monday through Thursday, and 7:30 to 5:00</p> <p>5 on Fridays.</p> <p>6 Q. And does DPS have the budget to do that?</p> <p>7 A. That's what we were trying to be able to</p> <p>8 consider, to do the calculations.</p> <p>9 Q. And did you make a determination on that?</p> <p>10 A. We looked and saw that there were some that --</p> <p>11 you know, it depends on how you scope it and where you</p> <p>12 cut it. Do we have the money to open all the offices at</p> <p>13 those numbers of hours? No, we don't.</p> <p>14 Q. Do you have the money to open some of the</p> <p>15 offices at those hours?</p> <p>16 A. Potentially, yes.</p> <p>17 Q. And is this a specific appropriation?</p> <p>18 A. No.</p> <p>19 Q. And when would this begin, if you were to</p> <p>20 extend the hours?</p> <p>21 A. It's not beginning. It was simply a</p> <p>22 discussion. You asked me had we ever considered it.</p> <p>23 Q. So you considered it and decided against it?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. And for what reason did you decide against it?</p>



193

1 A. Because it seemed like that we needed to look  
 2 at other things to be able to reduce the wait times.  
 3 Q. Did the legislature provide a specific  
 4 appropriation for EICs?  
 5 A. No, ma'am.  
 6 (Exhibit 849 marked for identification.)  
 7 Q. (By Ms. Maranzano) Okay. I'm showing you what  
 8 we're marking as Deposition Exhibit 849. Do you  
 9 recognize this document?  
 10 A. No.  
 11 Q. Can you look at the -- at the second page of  
 12 the document? Toward the end it says, "There are 81  
 13 Texas counties without a DPS driver's license office."  
 14 And this was an e-mail that was sent -- it looks like  
 15 March 14th, 2012. Does that seem correct to you?  
 16 A. That's from the reporter, Gary Scharrer.  
 17 Q. Uh-huh.  
 18 A. From the Houston Chronicle.  
 19 Q. But do you -- would you agree with 81 counties?  
 20 A. I have heard a number close to that, but I have  
 21 not personally gone through and verified that.  
 22 Q. And do you see after that, it says, "There are  
 23 very few such offices in the inner cities. In  
 24 San Antonio, for example, there are three DPS drivers'  
 25 license offices inside Loop 410, but none north of the

194

1 DT area and none west of the DT area, and long waiting  
 2 lines for driver's licenses." Would you agree with that  
 3 sentence?  
 4 MR. McKENZIE: Objection, speculation, but  
 5 you may answer if you can.  
 6 A. So in San Antonio, I am familiar with the  
 7 offices.  
 8 Q. (By Ms. Maranzano) Uh-huh.  
 9 A. There are currently four offices there, and it  
 10 appears that this is saying inner cities would equate to  
 11 minorities. Is that what you --  
 12 Q. Well, right now, I'm just asking about the --  
 13 well, first of all, let's focus on the part about  
 14 San Antonio. Is it true that there is no offices north  
 15 of the DT area and no offices west of the DT area and  
 16 long waiting lines for driver's licenses? Would you say  
 17 that's true?  
 18 MR. McKENZIE: Objection, vague as to know  
 19 the DT area, but go ahead and answer if you know.  
 20 Q. (By Ms. Maranzano) Do you know what the DT area  
 21 is?  
 22 A. Well, I'm guessing they mean downtown.  
 23 Q. I'm guessing they mean downtown as well.  
 24 A. None north of the DT area and none west of the  
 25 DT area. I think there are some that are north of the

195

1 DT area in San Antonio.  
 2 Q. So are you unsure?  
 3 A. Yes, I'm unsure.  
 4 Q. Okay. And regarding the statement, "There are  
 5 very few such offices in the inner cities," do you know  
 6 if that's true with regard to Dallas?  
 7 A. San Antonio is where I grew up, so I have a  
 8 little better sense there. I am not very familiar with,  
 9 with Dallas to be able to tell you what's considered an  
 10 inner city.  
 11 Q. How about Fort Worth?  
 12 A. The same thing.  
 13 Q. How about San Antonio?  
 14 A. Well, I mean that's where I was going to go.  
 15 One of the offices, when I visited there, has a very --  
 16 had a very large percentage of -- of minorities that  
 17 were served. So that just kind of -- that's why that  
 18 was just tripping me up.  
 19 Q. And would you say it was -- it was in the inner  
 20 city part of San Antonio?  
 21 A. Well, I don't know what definition of inner  
 22 city is. I think that it was located in an area where  
 23 there were a lot of minorities.  
 24 Q. And can you turn to the -- if you look -- I'm  
 25 going to direct your attention to -- to the bottom of

196

1 the first page where it talks about -- you'll be excited  
 2 to see it's a Mega Center, and I believe that's in  
 3 response to an inquiry that came from the second page.  
 4 And I believe the inquiry is actually the second  
 5 paragraph of what we were just looking at, where it  
 6 says, "What has the state planned to make it easier for  
 7 folks living in counties without DPS drivers' licenses  
 8 or in inner cities without nearby DPS drivers' licenses  
 9 to get a voter ID card? Mobile DPS drivers' licenses  
 10 offices in areas currently lacking such an office?  
 11 Evening and weekend hours in existing DPS drivers'  
 12 license locations?"  
 13 And do you see that the response that's  
 14 provided is about the Mega Centers --  
 15 A. Uh-huh.  
 16 Q. -- of DPS?  
 17 A. Uh-huh.  
 18 Q. So do you consider the Mega Centers and the  
 19 installation of these Mega Centers to be a response to  
 20 those questions that were asked in the e-mail?  
 21 A. I think that anytime you increase the staffing  
 22 capacity by 266 employees, that you are going to improve  
 23 the service. And we have specifically looked. You  
 24 know, lots of times, people don't go to the office  
 25 that's closest to them. They go to an office where they

197

1 believe that the wait time may be shorter. And so if  
2 people start going to offices, I believe that the Mega  
3 Centers, even if someone doesn't go to conduct their  
4 transaction at a Mega Center, that it will improve the  
5 service because there will be -- you know, if you go to  
6 a Mega Center, then I am not standing behind you at the  
7 office that's most convenient to me. Does that make  
8 sense?

9 Q. Uh-huh. So I guess what I'm wondering is: Do  
10 you consider the question of how is DPS making it easier  
11 for people without a driver's license office in their  
12 county or nearby, do you consider the answer to that  
13 question to be we're installing Mega Centers?

14 A. Yes, I think that the Mega Centers will help  
15 improve service.

16 Q. And -- okay. So yes -- yes, you do?

17 A. Yes.

18 Q. And at the very top of the page, do you see  
19 that there's a question, "What weekday offering hours  
20 will they have and weekend hours?" And I believe that's  
21 about the -- asking about the Mega Centers. Do you know  
22 the answer to that?

23 A. Currently, they are scheduled to open from 8:00  
24 to 5:00, Monday through Friday.

25 Q. All six -- is it six Mega Centers --

198

1 A. Yes.

2 Q. -- going to be opened?

3 A. Yes.

4 Q. And they're all scheduled for those hours?

5 A. Yes, ma'am.

6 Q. And this e-mail suggests that there will be two  
7 offices in Houston and one in San Antonio; is that  
8 correct?

9 A. Yes. Yes.

10 Q. And where are the other three going to be?

11 A. There's one in the Austin metropolitan  
12 statistical area. The name of the town is Pflugerville.

13 Q. Okay.

14 A. And there is one located in Garland and one in  
15 Fort Worth.

16 MS. MARANZANO: Okay. Why don't we take a  
17 break.

18 (Recess from 5:30 to 5:47 p.m.)

19 Q. (By Ms. Maranzano) Before the break we were  
20 looking at the document Exhibit 849, and we started to  
21 talk a little bit about the Mega Centers. The document  
22 says that \$63 million was appropriated by the Texas  
23 Legislature; is that correct?

24 A. Yes, ma'am.

25 Q. And did the legislature -- and we talked about

199

1 the locations for the Mega Centers. Did the legislature  
2 direct where the Mega Centers would be?

3 A. No, ma'am.

4 Q. How did you determine where they were going to  
5 be?

6 A. Texas State University helped us with  
7 that. They were still conducting their business  
8 intelligence analysis and they used geographic  
9 information systems to be able to look at the -- where  
10 the most underserved or the longest wait times were.

11 Q. Okay. And so these offices are going to go in  
12 areas that have the longest wait times?

13 A. Uh-huh.

14 Q. And I believe you testified about this earlier  
15 but just to be clear, how do you anticipate that the  
16 Mega Centers will impact wait times overall on the  
17 driver's license offices throughout Texas?

18 A. I think it will reduce them.

19 Q. But do you have any sense of what to expect in  
20 that regard?

21 A. No.

22 Q. And did you say a Mega Center -- that the  
23 meaning of Mega Center is how many staff will be  
24 employed there?

25 A. Twenty-five or more employees.

200

1 Q. Is that more than any of your offices  
2 currently?

3 A. We have one Mega Center.

4 Q. Okay. And where --

5 A. In Houston.

6 Q. Okay. And when are these -- when are these  
7 offices scheduled to be opened, these Mega Centers?

8 A. It looks like five of them are going to be opened  
9 in September and the sixth one is scheduled for January  
10 of 2013.

11 Q. And the one in Houston that's already open,  
12 that was not part of this appropriation?

13 A. No, ma'am.

14 Q. Okay. Thank you. During the consideration of  
15 SB 14, was DPS consulted about preparing a fiscal note  
16 to give to the legislative budget board?

17 A. My understanding is the agency is offered the  
18 opportunity to prepare to submit a fiscal impact  
19 statement for every bill.

20 Q. And did you -- did DPS submit a fiscal impact  
21 statement --

22 MR. McKENZIE: I'm --

23 Q. (By Ms. Maranzano) -- for SB 14?

24 MR. McKENZIE: I'm sorry, I didn't mean to  
25 talk over you. I'm going to object on scope grounds.

<p style="text-align: center;">201</p> <p>1 But you can go ahead and answer.</p> <p>2 A. To be perfectly honest, I don't know. I'm not</p> <p>3 involved in that process, so I can't remember</p> <p>4 specifically.</p> <p>5 (Exhibit 850 marked for identification.)</p> <p>6 Q. (By Ms. Maranzano) I'm showing you what we're</p> <p>7 marking as Deposition Exhibit 850. Does this look</p> <p>8 familiar to you?</p> <p>9 A. Yes.</p> <p>10 Q. And does this refresh your recollection that</p> <p>11 during the consideration of SB 14, DPS did not provide a</p> <p>12 fiscal impact statement to the legislative budget board?</p> <p>13 MR. McKENZIE: Same scope objection.</p> <p>14 But you may answer.</p> <p>15 A. So this does seem to indicate that, yes, in</p> <p>16 fact, we submitted a fiscal note -- DPS submitted a</p> <p>17 fiscal note.</p> <p>18 Q. (By Ms. Maranzano) And the fiscal note, though,</p> <p>19 said that you could make no estimate as to the fiscal</p> <p>20 impact; is that correct?</p> <p>21 A. I believe that's it.</p> <p>22 Q. And in previous sessions, according to this</p> <p>23 document, DPS had provided a fiscal impact statement,</p> <p>24 correct?</p> <p>25 MR. McKENZIE: Same scope objection. I'll</p>	<p style="text-align: center;">203</p> <p>1 then, that the EIC program will cost DPS something,</p> <p>2 correct?</p> <p>3 MR. McKENZIE: Same objection.</p> <p>4 A. Yes, I suppose we will have to pay for the</p> <p>5 cards.</p> <p>6 Q. (By Ms. Maranzano) Did DPS monitor SB 14 as it</p> <p>7 was progressing through the legislature?</p> <p>8 MR. McKENZIE: Are we still on this</p> <p>9 document?</p> <p>10 MS. MARANZANO: No.</p> <p>11 MR. McKENZIE: Okay. So scope objection</p> <p>12 then.</p> <p>13 MS. MARANZANO: Okay. Thanks.</p> <p>14 Can we mark this?</p> <p>15 (Exhibit 851 marked for identification.)</p> <p>16 Q. (By Ms. Maranzano) I'm showing you what we</p> <p>17 marked as Deposition Exhibit 851. Does this look</p> <p>18 familiar to you?</p> <p>19 A. The initial e-mail at the bottom --</p> <p>20 Q. Uh-huh.</p> <p>21 A. -- that Janie Smith sent to me looks familiar.</p> <p>22 I'm not certain that I've seen the others.</p> <p>23 Q. Okay. Do you see that, now as you review it,</p> <p>24 that there was a response to the initial e-mail that</p> <p>25 says that the initial e-mail was about the Senate</p>
<p style="text-align: center;">202</p> <p>1 just make a standing scope objection as to this whole</p> <p>2 document and then you can just --</p> <p>3 MS. MARANZANO: Okay.</p> <p>4 MR. McKENZIE: -- ask your questions.</p> <p>5 MS. MARANZANO: Okay. Thank you.</p> <p>6 A. This indicates, yes, that there was a fiscal</p> <p>7 impact statement submitted on a previous -- similarly --</p> <p>8 a similar bill during previous sessions.</p> <p>9 Q. (By Ms. Maranzano) Did DPS not provide a fiscal</p> <p>10 impact statement because it didn't want to publicly</p> <p>11 acknowledge how many people might need an Election</p> <p>12 Identification Certificate?</p> <p>13 A. I believe that we didn't submit a fiscal impact</p> <p>14 statement with a specified dollar amount because we felt</p> <p>15 like we were unable to estimate a specified dollar</p> <p>16 amount. There has been a change of a lot of the</p> <p>17 personnel at DPS since the previous legislative</p> <p>18 sessions.</p> <p>19 Q. Do you anticipate some people will need an</p> <p>20 Election Identification Certificate?</p> <p>21 MR. McKENZIE: Objection, speculation.</p> <p>22 But you may answer.</p> <p>23 A. I estimate that the legislature thinks that</p> <p>24 there will be some people that will need them -- an EIC.</p> <p>25 Q. (By Ms. Maranzano) Okay. And it's fair to say,</p>	<p style="text-align: center;">204</p> <p>1 conferees on SB 14; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And there was a response that said, "It's good</p> <p>4 for us because it means they'll strip off everything</p> <p>5 that cost the bill?"</p> <p>6 A. I see that.</p> <p>7 Q. Do you know what that means?</p> <p>8 A. No, ma'am.</p> <p>9 MR. McKENZIE: Objection, speculation.</p> <p>10 Q. (By Ms. Maranzano) Was DPS concerned about</p> <p>11 costs of the bill?</p> <p>12 MR. McKENZIE: Same objection to the</p> <p>13 extent it's relying on this document which she did not</p> <p>14 receive the top e-mail on?</p> <p>15 A. I think every state agency would probably be</p> <p>16 concerned about the effects of legislation, the effects</p> <p>17 that legislation will have on them, the good and bad.</p> <p>18 Q. (By Ms. Maranzano) So was DPS concerned about</p> <p>19 the costs that it might incur on implementing the EIC</p> <p>20 program?</p> <p>21 MR. McKENZIE: Same objection.</p> <p>22 A. In that manner, I'm not -- I'm not able to</p> <p>23 speak for DPS. My responsibility is the Driver License</p> <p>24 Division. There are other people at DPS who --</p> <p>25 Q. (By Ms. Maranzano) Was the driver's license</p>

<p style="text-align: center;">209</p> <p>1 A. I'm sorry, would you mind asking the question</p> <p>2 again?</p> <p>3 Q. (By Ms. Maranzano) Sure. I'm wondering about</p> <p>4 this last bullet which says, "The number of people</p> <p>5 requesting the election ID should be fairly low." Are</p> <p>6 you aware of whether any studies or analyses were</p> <p>7 conducted to try to determine how many people might be</p> <p>8 requesting an election ID?</p> <p>9 A. Are you asking me if the person who wrote this</p> <p>10 did it?</p> <p>11 Q. No, I'm just asking if you know of whether</p> <p>12 there were any studies or analyses done?</p> <p>13 A. I don't know --</p> <p>14 MR. McKENZIE: Same objection.</p> <p>15 I'm sorry, I said "same objection" and you</p> <p>16 said?</p> <p>17 THE WITNESS: "I don't know."</p> <p>18 MR. McKENZIE: Okay.</p> <p>19 Q. (By Ms. Maranzano) And at the top of the page,</p> <p>20 do you see that it says, "The Driver's License</p> <p>21 Division"?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And I know you said you have never seen this</p> <p>24 document. Do you think this may have come from your</p> <p>25 division?</p>	<p style="text-align: center;">211</p> <p>1 Q. And you said L1 was a vendor?</p> <p>2 A. It's the vendor that provides -- that produces</p> <p>3 the driver license and identification cards for us</p> <p>4 currently, and they would also provide this card.</p> <p>5 Q. And are you aware of whether there were</p> <p>6 conversations with the vendor prior to the SB 14</p> <p>7 actually being passed?</p> <p>8 MR. McKENZIE: Scope objection.</p> <p>9 But you may answer.</p> <p>10 A. Well, this would imply that, yes, there were.</p> <p>11 Q. Oh, you're right, the date is 5-9-11. I</p> <p>12 actually was intending to ask: If there were</p> <p>13 conversations with the vendor around the time that you</p> <p>14 were consulted about a fiscal note?</p> <p>15 MR. McKENZIE: Same scope objection.</p> <p>16 A. And my guess is no because it wasn't included</p> <p>17 in the fiscal note.</p> <p>18 Q. (By Ms. Maranzano) Okay.</p> <p>19 A. I think the requirement --</p> <p>20 Q. I'm sorry, what?</p> <p>21 A. Never mind.</p> <p>22 (Exhibit 853 marked for identification.)</p> <p>23 Q. (By Ms. Maranzano) I'm showing you what was</p> <p>24 marked as Deposition Exhibit 853. Does this look</p> <p>25 familiar to you?</p>
<p style="text-align: center;">210</p> <p>1 MR. McKENZIE: Objection, speculation.</p> <p>2 A. There's always that possibility but I -- I</p> <p>3 would be doubtful.</p> <p>4 Q. Okay. Do you think it probably came from DPS</p> <p>5 given that the bottom part of the page has comments that</p> <p>6 are specifically attributed to DPS?</p> <p>7 MR. McKENZIE: Same objection.</p> <p>8 A. It appears that those comments were attributed</p> <p>9 to DPS. I don't know if the document came from DPS or</p> <p>10 if that was someone outside who had talked to someone at</p> <p>11 DPS or what. I really --</p> <p>12 Q. (By Ms. Maranzano) Yeah, fair enough. Is there</p> <p>13 any reason that this hundred thousand dollar number</p> <p>14 wasn't provided to the legislative budget board?</p> <p>15 MR. McKENZIE: Objection, speculation.</p> <p>16 But you may answer.</p> <p>17 A. Well, if I was going to say, it would be the --</p> <p>18 the fiscal note that would have been provided --</p> <p>19 Q. (By Ms. Maranzano) Uh-huh.</p> <p>20 A. -- would have been provided earlier in the</p> <p>21 session. That this -- that, you know, as time</p> <p>22 progresses, you learn more. We know more about how we</p> <p>23 would approach EICs now than we did even in May or when</p> <p>24 the bill immediately passed, and so my guess is that it</p> <p>25 was new knowledge.</p>	<p style="text-align: center;">212</p> <p>1 A. Yes.</p> <p>2 Q. And what is it?</p> <p>3 A. This is an extract from the DPS system to track</p> <p>4 bills.</p> <p>5 Q. And do you do this extract routinely for</p> <p>6 various pieces of legislation?</p> <p>7 A. Yes.</p> <p>8 Q. And do you also do it at different stages of</p> <p>9 the legislation, for example, if it moves from one body</p> <p>10 in the legislature to a different body?</p> <p>11 A. Yes.</p> <p>12 Q. And do you see at the top it says, "Version:</p> <p>13 Enrolled as finally passed"?</p> <p>14 A. Yes.</p> <p>15 Q. And the bill is SB 14, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me who Janie Smith is?</p> <p>18 A. She's an employee in the Driver License</p> <p>19 Division.</p> <p>20 Q. And what's her role?</p> <p>21 A. She -- she's a policy and legislative analyst.</p> <p>22 Q. And was she on -- did she work on SB 14?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. In what capacity?</p> <p>25 A. She coordinated the analysis of that.</p>

213

1 Q. Do you see that Number 2, under Number 2, the  
2 question is about whether the bill relates to DPS's  
3 goals, and the response is "Yes." Do you see that?

4 A. Uh-huh.

5 Q. And do you see that it states, "As with other  
6 versions of this bill, this could effect lines of wait  
7 times at DL offices, particularly surrounding major  
8 voting times like at a presidential election." Do you  
9 agree with that statement?

10 MR. McKENZIE: I'm going to object on  
11 scope grounds.

12 But you can answer.

13 A. Well, it says it could effect wait times.

14 Q. (By Ms. Maranzano) Uh-huh.

15 A. So, yes, I can agree with that.

16 Q. And other than the Mega Centers, is DPS taking  
17 any steps to address the fact that, yes, these could  
18 effect wait times at driver's license offices?

19 A. No. Actually that's not totally true. I mean,  
20 we have a whole improvement plan -- transformation plan  
21 as part of the \$63 million. There's a whole bunch of  
22 things that are being done, they aren't being done  
23 specifically for Election Identification Certificates,  
24 but, yes, we are working to improve our customer  
25 service.

214

1 Q. In what ways other than the Mega Centers?

2 A. So we're improving training for our employees  
3 and our leadership to help leadership be better problem  
4 solvers. We've implemented online scheduling for drive  
5 tests. We have -- there's just a whole bunch of  
6 different things, none of them specifically related to  
7 Election Identification Certificates.

8 Q. Anything else that you can think of as you sit  
9 here today, training and online scheduling and the Mega  
10 Centers?

11 A. I'm very tired because normally I can rattle  
12 that stuff off the top of my head and I'd make you  
13 listen for the next hour. So, no. Consider yourself  
14 fortunate.

15 Q. Can you look at Number 7 in this chart for me?  
16 Do you see it talks about, under Number 7, training that  
17 would be provided? It says, "1,534 employees to be  
18 trained in a two-to-three hour session." Based on your  
19 experience working at DPS, do you think that two to  
20 three hours is sufficient amount of time to teach  
21 employees a whole new program area?

22 A. I think they did it in two to three hours. The  
23 benefit was from, you know, the EIC procedures were  
24 similar to existing ID and driver license procedures,  
25 and so that was probably what enabled that to be handled

215

1 in a relatively brief period of time.

2 Q. And when you say handled, have they -- they  
3 haven't already been trained, have they?

4 A. Yes, ma'am, they have.

5 Q. Oh, they have?

6 A. They have. We were ready to issue EICs  
7 beginning in January of 2012.

8 Q. I see. So they were trained in advance of  
9 January 2012 in place on this program?

10 A. They had to be because it was uncertain whether  
11 it was going to be implemented or not.

12 Q. And if you were to implemented this fall, would  
13 they be retrained?

14 A. Quite likely.

15 Q. Do you see that there's a cost listed to  
16 produce training materials that's \$3,481.70?

17 A. I do see that, yes.

18 Q. And what materials is that referring to?

19 A. I believe that the way that estimate was  
20 created they just said, "Okay, here, there's X number of  
21 people, there's 10 pages," or whatever. I think it was  
22 some formula.

23 Q. And --

24 A. It was consistent for all the bills that would  
25 require training for employees.

216

1 Q. I see. And what are the materials that it's  
2 referring to?

3 A. Well, I -- if I'm remembering correctly, it is  
4 things like, okay, there might be a CD or, you know, a  
5 packet of training materials or that kind of thing.  
6 That was just part of the blanket estimate not knowing  
7 the specifics what would actually be required.

8 Q. And when was that estimate made, that estimate  
9 was made in May of?

10 A. Yes. When this final version of the bill was  
11 analyzed.

12 Q. And is it usually analyzed pretty shortly after  
13 it's signed into law?

14 A. (Witness nods head yes.)

15 Q. Is that was a yes, for the record?

16 A. Yes. I'm sorry.

17 Q. Can you look at Number 13 of this chart? Do  
18 you see the question, "Does this bill conflict with  
19 current state or federal law," and it says, "No." Do  
20 you know what that conclusion is based on?

21 MR. McKENZIE: Objection, speculation and  
22 scope.

23 You may answer.

24 Well, this was actually produced in error.  
25 It should have been redacted.

<p style="text-align: center;">221</p> <p>1 MR. McKENZIE: Objection, scope.</p> <p>2 A. I'm sure you would have had it if I did.</p> <p>3 Q. (By Ms. Maranzano) Do you know why a DPS staff</p> <p>4 person would say that there's a connection between voter</p> <p>5 ID and non-legal status?</p> <p>6 MR. McKENZIE: Same speculation objection.</p> <p>7 A. I don't know what she's responding -- what</p> <p>8 she's referring to as non-legal status.</p> <p>9 Q. All right.</p> <p>10 (Exhibit 855 marked for identification.)</p> <p>11 Q. (By Ms. Maranzano) I'm showing you what we've</p> <p>12 marked as Deposition Exhibit 855. Do you recognize this</p> <p>13 document?</p> <p>14 A. Yes.</p> <p>15 Q. What is this document?</p> <p>16 A. This is the rules that spell out what's</p> <p>17 required to get a driver license or identification card</p> <p>18 that's the basis of -- that was used as the foundation</p> <p>19 for the EICs.</p> <p>20 Q. Has this requirement been effective in</p> <p>21 confirming applicants' identities?</p> <p>22 A. Yes.</p> <p>23 Q. Did you have any conversations with legislators</p> <p>24 during the consideration of SB 14 about confirming</p> <p>25 driver's license applicants' identities?</p>	<p style="text-align: center;">223</p> <p>1 employee would let them re-register to vote, you know,</p> <p>2 it's basically just checking a box and that kind of</p> <p>3 thing, and then we would process that application as</p> <p>4 normal.</p> <p>5 Q. Okay. And just to be clear, this was an</p> <p>6 applicant who is coming in to apply for an EIC?</p> <p>7 A. Uh-huh.</p> <p>8 Q. That's when the question came up, correct?</p> <p>9 A. (Witness nods head yes.)</p> <p>10 Q. Okay. Anything else?</p> <p>11 A. Nothing else that I can, specifically,</p> <p>12 remember.</p> <p>13 Q. And in terms of the issue with the registration</p> <p>14 card, is that something that you've trained your</p> <p>15 employees to do?</p> <p>16 A. I'm sorry?</p> <p>17 Q. You've trained your employees to re-register</p> <p>18 somebody who shows up without a registration card?</p> <p>19 A. We have not specifically trained, that's why I</p> <p>20 said I wasn't certain, initially, but I'm going to put</p> <p>21 in it my brain and make a note of that if, in fact, we</p> <p>22 will have to re-train.</p> <p>23 Q. Okay. Any -- anything else you want to change?</p> <p>24 A. Nothing I can recall.</p> <p>25 Q. And are there any answers that you didn't</p>
<p style="text-align: center;">222</p> <p>1 A. Did I have any conversations with legislators?</p> <p>2 MR. McKENZIE: I caution the witness not</p> <p>3 to reveal the individual legislator with whom you</p> <p>4 spoke. You may broadly answer as to what you provided</p> <p>5 the legislature, facts and things of that nature?</p> <p>6 A. I feel confident that there were questions</p> <p>7 regarding what was required to get a driver's license or</p> <p>8 ID card during legislative testimony.</p> <p>9 Q. (By Ms. Maranzano) And were there questions</p> <p>10 about whether the requirements had been effective in</p> <p>11 confirming -- or validating applicants' identities?</p> <p>12 A. I don't recall that specific question.</p> <p>13 MS. MARANZANO: Okay. Can we go off the</p> <p>14 record for two minutes. I'm close to being done.</p> <p>15 (Recess 6:24 to 6:28 p.m.)</p> <p>16 MS. MARANZANO: Back on the record.</p> <p>17 Q. (By Ms. Maranzano) Are there any answers that</p> <p>18 you testified about earlier today that you now wish to</p> <p>19 change?</p> <p>20 A. One that I was thinking about was that you</p> <p>21 asked me what would happen if somebody came in and they</p> <p>22 didn't have their voter registration card.</p> <p>23 Q. Uh-huh.</p> <p>24 A. And I said I didn't know. And I'm not</p> <p>25 positive, but I believe what would happen is that the</p>	<p style="text-align: center;">224</p> <p>1 remember previously that do you now?</p> <p>2 A. For the most part, I remember less now.</p> <p>3 Q. Okay. Well, I believe with that, I am done</p> <p>4 with my questions. Thank you so much for your time.</p> <p>5 MR. McKENZIE: I have a couple of</p> <p>6 questions on direct.</p> <p>7 MS. MARANZANO: Okay.</p> <p>8 EXAMINATION</p> <p>9 BY MR. McKENZIE:</p> <p>10 Q. One question: Do you get a lot of complaints</p> <p>11 from DPS customers about service issues stemming from</p> <p>12 language proficiency?</p> <p>13 A. I don't think I ever recall getting a complaint</p> <p>14 about language proficiency.</p> <p>15 Q. Okay. And do you get a lot of complaints about</p> <p>16 the DPS offices being too far away from customers?</p> <p>17 A. I'm not certain I ever recall getting a</p> <p>18 complaint about that either. The vast majority of our</p> <p>19 complaints are about the wait times.</p> <p>20 Q. And how many employees does DPS currently have</p> <p>21 approximately?</p> <p>22 A. 8,000 approximately for DPS.</p> <p>23 Q. I'm talking, specifically, about driver's</p> <p>24 license division. I'm sorry, my question wasn't</p> <p>25 precise.</p>



<p style="text-align: center;">225</p> <p>1 A. The number of employees that the Driver License</p> <p>2 Division has allocated right now is 1762.</p> <p>3 Q. Okay. So on a percentage scale, how many more</p> <p>4 employees is DPS going to add with the new appropriation</p> <p>5 from the legislature?</p> <p>6 A. That includes the increase of 266. So we had</p> <p>7 1462 before, and 266, I think, is better than a 20</p> <p>8 percent increase, right around a 20 percent increase.</p> <p>9 Q. And I just want to make this clear for the</p> <p>10 record, I believe you testified there were 1700</p> <p>11 employees in the driver's license division and just now</p> <p>12 you said there's 1400 in the driver's license division.</p> <p>13 Can you explain the discrepancy?</p> <p>14 A. No, I'm sorry, I meant -- wasn't clear. There</p> <p>15 were previously 1496 FTEs in the Driver License Division</p> <p>16 -- and an FTE is a full-time equivalent; so that's a</p> <p>17 permission to have an employee. And we added 266 and</p> <p>18 that got us 1762. So, as of this day --</p> <p>19 Q. Uh-huh.</p> <p>20 A. -- we are allocated to have 1762 employees.</p> <p>21 Q. Okay.</p> <p>22 A. So I actually confused it because I gave you</p> <p>23 the big number first.</p> <p>24 Q. Okay.</p> <p>25 MR. McKENZIE: And I'll pass the witness.</p>	<p style="text-align: center;">227</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 RE: TEXAS VS. HOLDER, ET AL</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 I, REBECCA DAVIO, have read the foregoing</p> <p>21 deposition and hereby affix my signature that same is</p> <p>22 true and correct, except as noted above.</p> <p>23</p> <p>24</p> <p>25 REBECCA DAVIO</p>
<p style="text-align: center;">226</p> <p>1 MS. MARANZANO: Just a couple more.</p> <p>2 FURTHER EXAMINATION</p> <p>3 BY MS. MARANZANO:</p> <p>4 Q. Just because you haven't received any</p> <p>5 complaints about the distance doesn't mean the customers</p> <p>6 are satisfied; is that correct?</p> <p>7 MR. McKENZIE: Objection, speculation.</p> <p>8 You may answer.</p> <p>9 A. I don't know. Customers, generally, if they're</p> <p>10 dissatisfied, seem to complain.</p> <p>11 Q. (By Ms. Maranzano) Have you ever surveyed your</p> <p>12 customers as to whether or not they're satisfied with</p> <p>13 how -- the distance from their home to their driver's</p> <p>14 license office?</p> <p>15 A. I don't believe that that was on surveys --</p> <p>16 customer satisfaction surveys that we've done.</p> <p>17 Q. Okay.</p> <p>18 MS. MARANZANO: I have nothing further.</p> <p>19 MR. McKENZIE: Nothing further.</p> <p>20 MS. MARANZANO: All right. Thank you for</p> <p>21 you time.</p> <p>22 (Deposition concluded at 6:33 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">228</p> <p>1 THE STATE OF _____)</p> <p>2 COUNTY OF _____)</p> <p>3</p> <p>4 Before me, _____, on this day</p> <p>5 personally appeared REBECCA DAVIO, known to me (or</p> <p>6 proved to me under oath or through _____</p> <p>7 (description of identity card or other document) to be</p> <p>8 the person whose name is subscribed to the foregoing</p> <p>9 instrument and acknowledged to me that they executed the</p> <p>10 same for the purposes and consideration therein</p> <p>11 expressed.</p> <p>12 Given under my hand and seal of office</p> <p>13 this _____ day of _____, 2012.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 NOTARY PUBLIC IN AND FOR</p> <p>18 THE STATE OF _____</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<div>1</div> <div>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</div> <div>STATE OF TEXAS, ) Plaintiff, ) VS. ) CASE NO. 1:12-CV-00128 (RMC-DST-RLW) ERIC H. HOLDER, JR., in his ) Three-Judge Court official capacity as Attorney ) General of the United States, ) Defendant. ) ERIC KENNIE, et al., ) Defendant-Intervenors, ) TEXAS STATE CONFERENCE OF ) NAACP BRANCHES, et al., ) Defendant-Intervenors, ) TEXAS LEAGUE OF YOUNG VOTERS ) EDUCATION FUND, et al., ) Defendant-Intervenors, ) TEXAS LEGISLATIVE BLACK ) CAUCUS, et al., ) Defendant-Intervenors, ) VICTORIA RODRIGUEZ, et al., ) Defendant-Intervenors. ) ----- ORAL DEPOSITION OF DENISE DAVIS JUNE 14, 2012 ----- ORAL DEPOSITION of DENISE DAVIS, produced as a</div>	<div>3</div> <div>A P P E A R A N C E S</div> <div>1 2 3 FOR THE PLAINTIFF: 4 PATRICK K. SWEETEN Assistant Attorney General 5 ATTORNEY GENERAL OF TEXAS P.O. Box 12548 6 Austin, Texas 78711 Tel: (512) 936-1307 7 Email: Patrick.sweeten@oag.state.tx.us 8 9 FOR THE DEFENDANT: 10 RISA BERKOWER ANGELA MILLER Trial Attorneys 11 U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Avenue, NW 12 Washington, DC 20005 Tel: (202) 305-0115 13 Email: Risa.berkower@usdoj.gov 14 15 FOR THE DEFENDANT-INTERVENOR: TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND, 16 ADAM M. HARRIS FRIED, FRANK, HARRIS, SHRIVER &amp; JACOBSON, LLP 17 One New York Plaza New York, New York 10004 18 Tel: (212) 859-8953 Email: Adam.harris@friedfrank.com 19 20 FOR SPEAKER STRAUS: 21 THOMAS R. PHILLIPS BAKER BOTTS 22 98 San Jacinto Boulevard, Suite 1500 Austin, Texas 78701 23 Tel: (512) 322-2565 Email: Tom.phillips@bakerbotts.com 24 25</div>
<div>2</div> <div>1 witness at the instance of the Defendant, and duly 2 sworn, was taken in the above-styled and numbered cause 3 on the 14th day of June, 2012, from 10:07 a.m. to 4:19 4 p.m., before Jean Thomas Fraunhofer, CSR in and for the 5 State of Texas, reported by machine shorthand, at the 6 Law Offices of DECHERT LLP, 300 West 6th Street, Suite 7 210, Austin, Texas 78701, pursuant to the Federal Rules 8 of Civil Procedure and the provisions stated on the 9 record or attached hereto. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>	<div>4</div> <div>I N D E X</div> <div>1 2 WITNESS PAGE 3 MEREDYTH FOWLER 4 Examination by Mr. Harris 5 5 Examination by Ms. Berkower 132 6 Examination by Mr. Sweeten 186 7 8 Signature and Changes 188 9 Reporter's Certificate 189 10 11 E X H I B I T S 12 NO. DESCRIPTION PAGE 13 League Exhibit 2 House Rules 15 14 League Exhibit 3 SB1706 37 15 League Exhibit 4 SB1706 Legislative History 39 16 League Exhibit 5 5/4/05 House Journal 51 17 League Exhibit 6 HB218 67 18 League Exhibit 7 HB218 Legislative History 69 19 League Exhibit 8 3/30/09 Austin Statesman article 75 20 League Exhibit 9 Senate Rules 83 21 League Exhibit 10 SB362 90 22 League Exhibit 11 SB362 Legislative History 91 23 League Exhibit 12 SB14 113 24 League Exhibit 13 SB14 Legislative History 116 25 26 US Exhibit 730 Press release for committee assignments 143 27 US Exhibit 731 SB14 Bill Report 144 28 US Exhibit 732 Voter fraud interim charge 157 29 US Exhibit 733 Email to Speaker Straus from DPS 173 30 31 32 33 34 35</div>

<p style="text-align: center;">5</p> <p>1 DENISE DAVIS,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 BY MR. HARRIS</p> <p>4 MR. HARRIS: Good morning, Ms. Davis. As</p> <p>5 I told you before, I'm Adam Harris from the law firm of</p> <p>6 Fried, Frank, Harris, Shriver &amp; Jacobson. We represent</p> <p>7 the Texas League of Young Voters Education Fund,</p> <p>8 defendant-intervenors in this litigation. Would</p> <p>9 everyone in the room identify themselves, please?</p> <p>10 MS. BERKOWER: Risa Berkower for the</p> <p>11 Attorney General, Eric Holder.</p> <p>12 MS. MILLER: Angela Miller for the</p> <p>13 Attorney General, Eric Holder.</p> <p>14 MR. PHILLIPS: Tom Phillips for Joe Straus</p> <p>15 and the House of Representatives or such members and</p> <p>16 former members of the staff as he may designate.</p> <p>17 MR. SWEETEN: Patrick Sweeten on behalf of</p> <p>18 the State of Texas and on behalf of the witness.</p> <p>19 MR. LEVY: Jonathan Levy, summer</p> <p>20 associate, Baker Botts.</p> <p>21 EXAMINATION</p> <p>22 BY MR. HARRIS</p> <p>23 Q. Mrs. Davis, can you please state your full name</p> <p>24 for the record?</p> <p>25 A. Denise Davis.</p>	<p style="text-align: center;">7</p> <p>1 given a deposition before, I will skip the various</p> <p>2 housekeeping rules -- housekeeping and ground rules,</p> <p>3 but, you know, to the extent there's an issue throughout</p> <p>4 the deposition, we can always talk about that, then I</p> <p>5 guess I would remind you, if you need a break at any</p> <p>6 time, I'll be happy to take one. Please let me know.</p> <p>7 A. Okay.</p> <p>8 Q. Where did you go to law school?</p> <p>9 A. University of Texas.</p> <p>10 Q. When did you graduate?</p> <p>11 A. 1992.</p> <p>12 Q. Can you list the jobs that you've held since</p> <p>13 graduating law school in 1992?</p> <p>14 A. Yeah. I was a drafting attorney or legislative</p> <p>15 counsel for the Texas Legislative Council and --</p> <p>16 Q. Approximately what years did you hold that</p> <p>17 position?</p> <p>18 A. 1993 to 1996. And then I went to work for the</p> <p>19 Senate Jurisprudence Committee as committee director and</p> <p>20 counsel, so from '97 to basically early 1998, somewhere</p> <p>21 around that time.</p> <p>22 Q. What was the next position you held?</p> <p>23 A. Director and counsel to the Texas Judicial</p> <p>24 Council from around 1998 until 2000 -- the end of 2000.</p> <p>25 Q. And what was your next position?</p>
<p style="text-align: center;">6</p> <p>1 Q. And can you give your address, please?</p> <p>2 A. 58 Country Oaks Drive, Buda, Texas, 78610.</p> <p>3 Q. Ms. Davis, you are an attorney; is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Are you currently licensed to practice in</p> <p>7 Texas?</p> <p>8 A. Yes.</p> <p>9 Q. Are you licensed to practice in any other</p> <p>10 states?</p> <p>11 A. No.</p> <p>12 Q. Have you ever given a deposition before?</p> <p>13 A. Yes.</p> <p>14 Q. How many times?</p> <p>15 A. Once.</p> <p>16 Q. Can you tell me about that case?</p> <p>17 A. It was a -- just a civil suit with just a -- it</p> <p>18 was a builder.</p> <p>19 Q. With what?</p> <p>20 A. A construction lawsuit between us and a</p> <p>21 contractor.</p> <p>22 Q. I see. Was that a lawsuit that you were</p> <p>23 involved in your personal capacity?</p> <p>24 A. Yes.</p> <p>25 Q. Well, given that you are an attorney and you've</p>	<p style="text-align: center;">8</p> <p>1 A. General counsel for the lieutenant governor</p> <p>2 from 2000 until -- from January -- from 2001 until</p> <p>3 January of 2003.</p> <p>4 Q. And after serving as general counsel for the</p> <p>5 lieutenant governor, what was the next position that you</p> <p>6 held?</p> <p>7 A. Deputy parliamentary -- Deputy House</p> <p>8 parliamentary from 2003 to 2004 and then House</p> <p>9 parliamentary from January 2004 until May of 2007, and</p> <p>10 then from the fall of 2007, special counsel at Baker</p> <p>11 Botts until January of 2009. Then back to House</p> <p>12 parliamentary from January of 2009 until January of</p> <p>13 2010, and then chief of staff from January 2010 until</p> <p>14 March of 2010.</p> <p>15 Q. When you say chief of staff --</p> <p>16 A. For the speaker.</p> <p>17 Q. And that's Speaker Straus, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Throughout your legal career have you ever had</p> <p>20 any particular experience with election or voting law?</p> <p>21 A. I don't -- What do you mean? Just reading the</p> <p>22 Statutes or --</p> <p>23 Q. Well, starting with your time as drafting</p> <p>24 counsel or counsel for the Legislative Council -- for</p> <p>25 the Texas Legislative Council, excuse me, did you have</p>

<p style="text-align: center;">9</p> <p>1 any particular responsibility for drafting legislation 2 related to Texas elections? 3 A. Not that I recall, no. 4 Q. How about in your capacity as committee 5 director for the senate judiciary? Was it jurisprudence 6 committee? 7 A. Senate jurisprudence. 8 Q. What is the subject matter that the 9 jurisprudence committee covers? 10 A. Well, back then it was mostly tort. The 11 jurisdiction's changed, so this was way back, but it was 12 mostly tort law and courts -- jurisdiction and 13 administration of the court system, things like that. 14 Q. You said that you were director of the Texas 15 Judicial Council? 16 A. Right. 17 Q. What is the Texas Judicial Council? 18 A. They are -- They do policy for the judiciary, 19 so they do things like public access to court records, 20 judicial compensation, judicial -- what I would call 21 judicial management, emergency management, things like 22 that, budget for the courts, technology. 23 Q. In your capacity as general counsel for the 24 lieutenant governor, what were your duties in that role? 25 A. Redistricting, working on that, tort issues,</p>	<p style="text-align: center;">11</p> <p>1 mean, matters of procedure, and when the parliamentary 2 is unavailable, you would -- you sit in for the 3 parliamentary whether they are not available. 4 Q. Is the parliamentary an employee of the 5 speaker? 6 A. The parliamentary is a House officer, so they 7 work for the House of Representatives. 8 Q. Is it correct that in or around May of 2007, 9 you resigned your position as parliamentary? 10 A. Yes. 11 Q. Can you tell me why you resigned? 12 MR. SWEETEN: In answering the question, I 13 don't want you do reveal any communications you had with 14 legislative staff as the parliamentary or any 15 communications that you've had with state agencies, with 16 Texas legislative counsel. Those would be subject to 17 the legislative privilege, and as we've discussed, any 18 members of the House or legislative staff, okay? 19 THE WITNESS: Okay. 20 MR. SWEETEN: So don't reveal any 21 communications. Also, there is -- another element to it 22 is legislative privilege. You are protected from having 23 to provides information related to your mental 24 processes, motivations about legislation or a 25 legislative act. So be mindful of that when answering</p>
<p style="text-align: center;">10</p> <p>1 open records, criminal law, general -- just regular 2 general counsel duties, personnel. 3 Q. In your capacity as general council to the 4 lieutenant governor, did you have any experience with 5 the Voting Rights Act? 6 A. Probably only as it related to redistricting, 7 but I can't remember directly what it would be. 8 Q. What do you recall about your involvement with 9 redistricting as general counsel to the lieutenant 10 governor? 11 A. Just advising on the floor proceeding and the 12 calendar, just general advice. 13 Q. Okay. How is it that you came to be deputy 14 House parliamentary? 15 A. I was asked to be. I was just asked by the 16 person that was going to be parliamentary if I would 17 be his deputy parliamentary. 18 Q. What is the House parliamentary? 19 A. They are a House officer, and they interpret 20 the rules and precedents, and they advise the presiding 21 officer on matters of rules and procedure and process. 22 Q. And as deputy House parliamentary, what would 23 your duties include? 24 A. You would assist the parliamentary, do some 25 research on procedural issues and matters of policy -- I</p>	<p style="text-align: center;">12</p> <p>1 the question and you can answer the question to the 2 extent you are not revealing those privileges. 3 A. Okay. Ask it again. 4 MR. HARRIS: Sure. I will ask the court 5 reporter to read it back. 6 THE REPORTER: Can you please restate it? 7 I'm having problems with the computer. 8 Q. I believe the question was can you briefly tell 9 me why you resigned your position as House 10 parliamentary in 2007? 11 A. I just felt like it would be better -- in the 12 best interests of the House for someone else to serve 13 that role. 14 Q. There were press reports in or around 2007 15 describing a letter that Speaker Tom Craddick had sent 16 you regarding your obligation with respect to 17 attorney-client privilege and that letter was published 18 in the press. Do you recall that? 19 A. Yes. 20 Q. And did you consider yourself to have an 21 attorney-client relationship with Speaker Craddick? 22 A. I considered myself to have the relationship -- 23 a confidential relationship with the speaker, 24 legislative privilege. 25 Q. And I believe you said that in the fall of '07</p>

13

1 you became special counsel at Baker Botts; is that  
 2 right?  
 3 A. Yes.  
 4 Q. What sort of work did you do there?  
 5 A. Just a general corporate practice, some  
 6 governmental relations, but mostly legal research.  
 7 Q. At that time did you work on any issues  
 8 relating to election or voting law?  
 9 A. No.  
 10 Q. And what were the circumstances under which you  
 11 came back to become House parliamentarian again in 2009?  
 12 A. There was a new speaker, and the House wanted  
 13 an experienced parliamentarian, so I -- I was available  
 14 to come back.  
 15 Q. Is it correct that when you came back as House  
 16 parliamentarian in 2009, you also held the title of  
 17 special counsel?  
 18 A. Yes.  
 19 Q. Was that special council to the speaker of the  
 20 House?  
 21 A. No, to the House.  
 22 Q. What were the circumstances under which you  
 23 switched from being the House parliamentarian and  
 24 special counsel to the House to becoming chief of staff  
 25 to Speaker Straus?

14

1 MR. SWEETEN: You can answer the question.  
 2 Just don't reveal any sort of attorney-client privilege  
 3 or legislative privilege matters in doing so, okay?  
 4 A. The sitting chief of staff wanted to go back to  
 5 the private sector, and I was experienced and I was  
 6 there and I -- I got -- I was asked to do it.  
 7 Q. And what were your duties as chief of staff to  
 8 Speaker Straus?  
 9 A. You manage the staff, administrative role --  
 10 play an administrative role for the speaker of the  
 11 House. You just -- What I would call just general  
 12 duties of the speaker's office, oversee those, work with  
 13 the speaker on matters of policy and work with the other  
 14 House officers and --  
 15 Q. Can you describe the speaker's role in the  
 16 House?  
 17 MR. SWEETEN: You can answer as a matter  
 18 of general parliamentary procedure.  
 19 A. He is the preceding officer of the House.  
 20 Q. What are his duties as preceding officer?  
 21 A. He oversees the daily operations of the House  
 22 and works with the leadership to determine what issues  
 23 go before the House, and he in consultation with the  
 24 parliamentarian rules on matters of procedure before the  
 25 House.

15

1 Q. A speaker can vote on legislation, correct?  
 2 A. Yes.  
 3 Q. Can he vote on all legislation or only certain  
 4 legislation?  
 5 A. All.  
 6 (League Exhibit 2 marked.)  
 7 Q. I'd like this document to be marked as Texas  
 8 League -- I think we are up to 2.  
 9 Ms Davis, the court reporter just handed  
 10 you Exhibit 2. Take a moment to look this over. I'll  
 11 represent to you it is not the entire document, but,  
 12 rather, excerpts, but my first question is do you  
 13 recognize what this excerpted document is?  
 14 A. Yes.  
 15 Q. What is it?  
 16 A. It's -- It's portions of the House rules.  
 17 Q. And who the writes this document?  
 18 A. Well, the members write it, but the ledge  
 19 council drafts what the members want them to write.  
 20 Q. And is there something that the members of the  
 21 House have to vote on?  
 22 A. Yes.  
 23 Q. And he see on the cover page here that this  
 24 refers to the -- to the 81st legislature?  
 25 A. Yes.

16

1 Q. Do you know what year that would have covered?  
 2 A. That would have been 2009.  
 3 Q. And you were House parliamentarian at that  
 4 time; is that correct?  
 5 A. Yes.  
 6 Q. Could you please turn to the second page, what  
 7 I've handed you? But the page number at the bottom is  
 8 18.  
 9 A. Yes.  
 10 Q. And look at Section 9. It says, "The  
 11 parliamentarian is an officer of the House who serves at  
 12 the pleasure of the speaker." What does it mean to be  
 13 an officer of the House?  
 14 A. It means that you work for the entire House as  
 15 an institution.  
 16 Q. The next sentence says that the  
 17 parliamentarian -- and I'm sorry, the aspect of the  
 18 sentence, it says, "serves at the pleasure of the  
 19 speaker." Does that mean that the speaker has the  
 20 authority to terminate you as parliamentarian?  
 21 A. Yes.  
 22 Q. And then the next sentence says,  
 23 "Parliamentarian shall advise and assist the presiding  
 24 officer and/or the members of the House on matters of  
 25 procedure." I believe earlier you said that the speaker

<p style="text-align: center;">17</p> <p>1 is generally the presiding officer; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. What does it mean to "advise and assist either</p> <p>4 the presiding officer and/or the members of the House on</p> <p>5 matters of procedure"?</p> <p>6 A. It means is that you answer questions, do</p> <p>7 research, things like that.</p> <p>8 Q. When the House is in session, does the</p> <p>9 parliamentarian sit on the floor?</p> <p>10 A. Yes.</p> <p>11 Q. Do you -- or I guess in your capacity as</p> <p>12 parliamentarian, did you always sit on the floor when</p> <p>13 the House was in session?</p> <p>14 A. No.</p> <p>15 Q. How frequently would you sit on the floor when</p> <p>16 the House was in session?</p> <p>17 A. The majority of the time the parliamentarian is</p> <p>18 on the floor when the House is in the session.</p> <p>19 Q. So you said that one of the jobs of the</p> <p>20 parliamentarian is to answer questions for members. Is</p> <p>21 it ever the parliamentarian's role to intervene in the</p> <p>22 proceeding without a question having been asked? So,</p> <p>23 for instance, you are viewing the proceedings and you</p> <p>24 think something is happening that violates a procedural</p> <p>25 rule of the House, can you -- I guess the legal term</p>	<p style="text-align: center;">19</p> <p>1 rules describing the official role of the</p> <p>2 parliamentarian in prior versions of the rules and</p> <p>3 precedents of the Texas House?</p> <p>4 A. Well, it covered the parliamentarian's role</p> <p>5 prior to that because the parliamentarian is an employee</p> <p>6 of the council and then in '09, they did a specific</p> <p>7 provision for the parliamentarian, but the</p> <p>8 parliamentarian is a legislative council employee, and</p> <p>9 so they -- prior to that time, Section 10 was used for</p> <p>10 interpreting that, the role of parliamentarian.</p> <p>11 Q. I believe you said that your first job out of</p> <p>12 law school was as a drafting counsel for the Texas</p> <p>13 Legislative Council; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. First of all, what is the Texas Legislative</p> <p>16 Council?</p> <p>17 A. It's a legislative support agency for the Texas</p> <p>18 legislature.</p> <p>19 Q. What role does the Texas Legislative Council</p> <p>20 perform for the legislature?</p> <p>21 A. They do technology, computer support. They do</p> <p>22 research. They draft resolutions. They do legal work,</p> <p>23 legal research.</p> <p>24 Q. As drafting counsel, what was your duties at</p> <p>25 the Texas Legislative Council?</p>
<p style="text-align: center;">18</p> <p>1 would be sua sponte, but let's say on your own could you</p> <p>2 intervene somehow?</p> <p>3 MR. SWEETEN: You can answer as a matter</p> <p>4 of parliamentary procedure. Don't reveal your specific</p> <p>5 discussion regarding specific legislation. Go ahead.</p> <p>6 A. Well, under the rules it states you can advise</p> <p>7 the presiding officer, so you could advise the presiding</p> <p>8 officer if there was something going on that you had</p> <p>9 issues about.</p> <p>10 Q. Reading from the next sentence, it says, "The</p> <p>11 parliamentarian has a duty of confidentiality to the</p> <p>12 speaker and to each member of the House and shall keep</p> <p>13 confidential all requests made by members of the House</p> <p>14 for advise for guidance regarding procedure unless the</p> <p>15 parties otherwise agree." Does that sort of in a</p> <p>16 nutshell capture what you were describing before when</p> <p>17 you said you had duties of confidentiality to the House</p> <p>18 and to members of the House?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know when this rule, this Section 9,</p> <p>21 describing the role and duties of the parliamentarian</p> <p>22 became an official part of the rules of the Texas House?</p> <p>23 A. The Rule 9, I think, it was actually enacted in</p> <p>24 '09.</p> <p>25 Q. Do you recall whether there were any similar</p>	<p style="text-align: center;">20</p> <p>1 A. I drafted criminal law and juvenile justice and</p> <p>2 human services.</p> <p>3 Q. How would you decide what resolutions or bills</p> <p>4 to draft as a general matter?</p> <p>5 A. The members would make the request for bills to</p> <p>6 be drafted and then you would take their drafting</p> <p>7 instructions and draft.</p> <p>8 Q. Are you aware of any time when the Texas</p> <p>9 Legislative Council would take it upon itself to draft a</p> <p>10 bill without a specific request from a member?</p> <p>11 A. I don't know.</p> <p>12 Q. Did you ever draft any legislation on your own</p> <p>13 that you thought of?</p> <p>14 A. As a legislative counsel?</p> <p>15 Q. Correct.</p> <p>16 A. No.</p> <p>17 Q. And I apologize if we've already covered this,</p> <p>18 but did you draft any bills in your time with the Texas</p> <p>19 Legislative Council relating to either the Texas</p> <p>20 Election Code or Texas elections in general?</p> <p>21 A. Not to my knowledge. I did criminal law and</p> <p>22 juvey justice, things like that.</p> <p>23 Q. In general without referring to any specific</p> <p>24 decision you made as parliamentarian, when you would get</p> <p>25 a request for advice from a member, what would you do at</p>



<p style="text-align: center;">21</p> <p>1 that point?</p> <p>2 MR. SWEETEN: Object. Compound, vague,</p> <p>3 but go ahead. You can answer the question as a matter</p> <p>4 of general procedure.</p> <p>5 A. Oh, consult the rules and the law.</p> <p>6 Q. And when you say "the law," we've obviously</p> <p>7 talked about the rules. What other sources of law would</p> <p>8 you refer to?</p> <p>9 A. Constitutional. The Constitution.</p> <p>10 Q. Would you ever look to case law?</p> <p>11 A. Occasionally, you could, but rarely -- rarely</p> <p>12 would you get into case law. It's usually procedural.</p> <p>13 Q. Did you receive any specialized training in</p> <p>14 order to become either deputy parliamentarian or</p> <p>15 parliamentarian?</p> <p>16 A. No.</p> <p>17 Q. Do you know if there exists any specialized</p> <p>18 training one could take to become a parliamentarian?</p> <p>19 A. To become House parliamentarian?</p> <p>20 Q. Yes.</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. There is a senate parliamentarian as well,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. How familiar are you -- or during your time as</p>	<p style="text-align: center;">23</p> <p>1 Q. If an issue came -- In general, when issues of</p> <p>2 proper procedure in the House came up, would you ever</p> <p>3 consult the Senate parliamentarian as to the proper</p> <p>4 ruling?</p> <p>5 A. In a House matter?</p> <p>6 Q. Correct.</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. How about vice versa? Did either Mr. Fisher or</p> <p>9 Ms. Corina Davis ever consult with you regarding an</p> <p>10 issue of either interpretation of the Senate rules or</p> <p>11 proper procedure in the Senate?</p> <p>12 A. Not to my knowledge, no.</p> <p>13 Q. What did you do to prepare for your deposition</p> <p>14 today?</p> <p>15 A. Just met with counsel and came here.</p> <p>16 Q. And you are represented here today by</p> <p>17 Mr. Sweeten; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Is anyone else in the room representing you</p> <p>20 today?</p> <p>21 A. I guess technically in my capacity as chief of</p> <p>22 staff, Tom Phillips.</p> <p>23 Q. Are you currently chief of staff to the</p> <p>24 speaker?</p> <p>25 A. No.</p>
<p style="text-align: center;">22</p> <p>1 a House parliamentarian and deputy parliamentarian, how</p> <p>2 familiar were you with the rules of the Senate?</p> <p>3 A. Vaguely -- Vaguely familiar with those.</p> <p>4 Q. In general, did you have any interaction with</p> <p>5 the Senate parliamentarian?</p> <p>6 A. Yes.</p> <p>7 Q. What the sort of interaction did you have with</p> <p>8 the Senate parliamentarian?</p> <p>9 A. We would talk on the phone, consult about the</p> <p>10 flow of and consideration of bills to make sure the</p> <p>11 House and the Senate were, you know, operating in a way</p> <p>12 that was efficient.</p> <p>13 Q. How frequently would you talk to the Senate</p> <p>14 parliamentarian when the House was in session?</p> <p>15 A. Probably once or twice a week maybe.</p> <p>16 Q. During your time as House parliamentarian</p> <p>17 between 2004 -- Let's start with the first period. From</p> <p>18 2004 to 2007, do you recall who the Senate</p> <p>19 parliamentarian was during those years?</p> <p>20 A. I believe it was Walter Fisher and then Corina</p> <p>21 Davis. Corina.</p> <p>22 Q. Then how about when you returned as House</p> <p>23 parliamentarian in January of 2009 through January of</p> <p>24 2010?</p> <p>25 A. Corina Davis.</p>	<p style="text-align: center;">24</p> <p>1 Q. What is your current job?</p> <p>2 A. I'm in private practice.</p> <p>3 Q. As an attorney?</p> <p>4 A. Yes.</p> <p>5 Q. Can you tell me briefly what sort of practice</p> <p>6 you have now?</p> <p>7 A. I have a small practice that is a regulatory</p> <p>8 and corporate practice.</p> <p>9 Q. And going back to what you did to prepare for</p> <p>10 this deposition, I think you said you met with</p> <p>11 Mr. Sweeten.</p> <p>12 A. Yes.</p> <p>13 Q. How many times did you meet with Mr. Sweeten?</p> <p>14 A. Twice. Yesterday and today.</p> <p>15 Q. And when you met with Mr. Sweeten yesterday,</p> <p>16 how long did you meet yesterday?</p> <p>17 A. Maybe about an hour and a half.</p> <p>18 Q. Was anyone else present during that meeting?</p> <p>19 A. Stacey Napier and Tom Phillips.</p> <p>20 Q. I think you said you had a second meeting with</p> <p>21 Mr. Sweeten.</p> <p>22 A. Yes.</p> <p>23 Q. When was that?</p> <p>24 A. This morning.</p> <p>25 Q. How long did that meeting last?</p>

25

1 A. 30 minutes.

2 Q. Was anyone else besides yourself and Mr.  
3 Sweeten present during that meeting?

4 A. Yes. The intern.

5 Q. Without asking you to get into any specifics,  
6 did you review documents in preparation for this  
7 deposition?

8 A. No.

9 Q. I'd obviously like to talk to you a lot about  
10 the legislative process, specifically on the House side.  
11 Starting at the very beginning of the process, how does  
12 a bill get introduced in the Texas House?

13 MR. SWEETEN: You can answer as a general  
14 matter.

15 A. The bill gets referred or read by the -- Well,  
16 it gets filed with the clerk -- with the chief clerk and  
17 then it gets referred to a committee and then it at that  
18 point is in the jurisdiction of the committee to decide  
19 when they want to hear the billing and then at that  
20 point it comes out of the committee and goes to the  
21 calendar committee for consideration for House action --  
22 floor action.

23 Q. You said a bill gets referred to a committee.  
24 Who makes the decision as to which committee to refer a  
25 bill to in the House?

26

1 A. The speaker.

2 Q. And as a general matter what sorts of  
3 considerations does he take into account in deciding  
4 which committee to assign a bill to?

5 MR. SWEETEN: Hold on a minute. The  
6 question asks for the speaker's thought process. If  
7 answering the question would impact any specific  
8 legislation and considerations taken with respect to  
9 specific legislation, my instruction would be not to  
10 answer the question. If you can answer as a general  
11 matter without discussing specific legislation, then  
12 I'll allow you to do so, but be mindful of the fact  
13 that -- do not reveal it if it would reveal his mental  
14 impressions.

15 A. Okay. Under the House rules the speaker can  
16 confer with the parliamentarian to determine where bills  
17 go.

18 Q. When you were House parliamentarian, first  
19 starting under Speaker Craddick, would he consult with  
20 you regarding which committee to assign a bill?

21 A. Yes.

22 Q. And how about under Speaker Straus, as House  
23 parliamentarian would Speaker Straus consult with you as  
24 to which committee a bill would be assigned to?

25 A. Yes.

27

1 Q. What considerations would you take into account  
2 when helping the speaker decide which committee to  
3 assign a bill too?

4 MR. SWEETEN: I'm going to object to  
5 compound. I'm also going to instruct you with respect  
6 to the legislative privilege, do not reveal the thought  
7 processes or mental impressions that took place with  
8 respect to any sort of specific legislation. If  
9 answering this question would do so, do not answer it,  
10 okay?

11 A. Ask the question. What was the question again?

12 Q. What considerations would you take into account  
13 when advising the speaker as to which committee a bill  
14 should be assigned to?

15 A. You would just look at the House rules, see  
16 what -- the jurisdictional issues that there are.

17 Q. Is it ever the case a committee's -- that a  
18 bill could fall under more than one committee's  
19 jurisdiction?

20 A. Yes.

21 Q. And how would you resolve that conflict as to  
22 which of the two or more committees to assign a bill to?

23 MR. SWEETEN: Same instruction.

24 A. I think you just look at each bill and confer  
25 with the speaker.

28

1 Q. Stepping back for a moment, you said the first  
2 step in the process is that a bill is filed. Going back  
3 even earlier in the timeline, we talked about the Texas  
4 Legislative Council, but I would ask you in general who  
5 writes the bills that are filed in the House?

6 A. Well, it could be anyone that could write it.  
7 It could be the member. It could be ledge council. It  
8 could be anyone.

9 Q. What is a co-author?

10 A. Co-author is someone that is -- that the --  
11 along with the author of the bill, they have their name  
12 on the bill, another member.

13 Q. Is there a difference between a co-author and a  
14 joint author?

15 A. I believe that the -- that there is -- that  
16 there are a limited number of co-authors that you can  
17 have on a bill. Five, I believe, or there's one author  
18 and four co-authors, and then you can have I believe an  
19 unlimited number of joint authors.

20 Q. What is the sponsor of the bill?

21 A. I'd have to look at the rules and tell you.  
22 It's been a long time.

23 Q. I may have not have observed that about you,  
24 but I'm asking for your recollection if you have one.  
25 Well, is the person who introduces the bill, the bill's

29

1 sponsor?

2 A. I believe that's the author of the bill is the  
3 person that introduces and then you can have -- you can  
4 have lots of sponsors and then -- but you can have a  
5 limited number of co-authors, I believe, is how the rule  
6 is interpreted.

7 Q. What significance is there to the date on which  
8 a bill gets filed?

9 A. Well, that's when the author of the bill brings  
10 the bill into the committee clerk's office and it gets  
11 stamped by the chief clerk -- I'm sorry, of the House,  
12 not the committee clerk. By the chief the clerk of the  
13 House. That's when they bring the bill in and have it  
14 stamped.

15 Q. Are there any reasons why a member would want  
16 to file very early in the session as opposed to waiting  
17 longer in time and filing it later?

18 A. Yes.

19 Q. And what would those reasons be as a general  
20 matter?

21 MR. SWEETEN: Objection. Common, but go  
22 ahead. You can answer as a general matter. Do not  
23 reveal any information about a specific piece of  
24 legislation.

25 A. It may be a high priority to the member in the

30

1 district or it just get it filed for whatever reason.

2 There are many numerous reasons depending on the  
3 members.

4 Q. How long is the Texas House in session for?

5 A. 140 days.

6 Q. If someone were to introduce a bill, let's say,  
7 on Day 138 with two days remaining in a session, as a  
8 general matter could that impact the chances of that  
9 bill going through the process in time for that session?

10 A. Do you mean would it? I don't understand your  
11 question. You mean, would it pass? Is that what you  
12 are asking?

13 Q. Well, I'm just asking is there any significance  
14 as to how early a bill is filed in terms of the chances  
15 that it will make it through the session in time prior  
16 to the end of the session.

17 A. I think generally members want to file their  
18 bills early.

19 Q. Have you ever heard of members camping out to  
20 ensure that they get an early bill number?

21 A. Yes.

22 Q. What does that camping out refer to or what do  
23 you recall about that?

24 A. I just -- I've heard of members bringing things  
25 in and sleeping in line, I guess, to file bills.

31

1 Q. Is it correct that bill numbers are assigned to  
2 a bill in the order in which they are a filed?

3 A. Generally, yes. That's generally right.

4 Q. Do you recall members camping out to file --  
5 Let's step back for a moment. Are you familiar with  
6 bills in Texas relating to photo identification for  
7 voters that voters must show at the polls?

8 A. Yes.

9 Q. Do you recall anyone camping out to file such a  
10 bill?

11 A. No.

12 Q. Once a bill is referred to committee, what  
13 happens then?

14 A. Once a bill is referred to committee, then it's  
15 up to the committee and the chairman of the committee to  
16 decide what to do with the bill.

17 Q. Are there normal procedures that committees  
18 following in considering bills?

19 MR. SWEETEN: Objection. Compound. You  
20 can answer as a general matter.

21 A. Yes.

22 Q. Where are those procedures?

23 A. Well, they decide what the -- when they want to  
24 set it and who they -- which bills they want voted out  
25 and what the testimony will be and that just general

32

1 administrative things and beyond that it's up to the  
2 chairman.

3 Q. If a bill is not voted out of committee, what  
4 happens to it then?

5 A. It just stays there.

6 Q. If a bill is in fact voted out of committee,  
7 what happens to the bill at that point?

8 A. It goes to the calendars committee.

9 Q. What is the calendar committee?

10 A. It's a procedure or committee that sets the  
11 floor action of bills for consideration by the House and  
12 recommends those for consideration by the House.

13 Q. When you say they recommend floor action or  
14 consideration for the bill, what does that mean?

15 A. That means they set a calendar -- a daily  
16 calendar for House action on bills.

17 Q. Is it possible that a bill could come out of  
18 committee, but not be assigned by the -- for floor  
19 action?

20 A. You mean come out of the committee and just go  
21 to the calendars and stay in calendars?

22 Q. Correct.

23 A. Yes.

24 Q. To complete the process, let's say assuming  
25 that the calendars committee sets the bill for floor

33

- 1 consideration, what happens at that point in the  
2 process?  
3 A. It gets puts on a calendar.  
4 Q. Is there more than one type of calendar?  
5 A. Yes.  
6 Q. What are the types of calendars?  
7 A. There's the emergency calendar, constitutional  
8 calendar. There is a whole system of calendars. I'd  
9 have to look at the rules, but there are several  
10 calendars. Emergency, constitutional, major state,  
11 general state, local and consent which is through the  
12 local and consent calendars committee.  
13 Q. As a general matter, what dictates which  
14 calendar a bill is assigned to?  
15 A. Well, the rules and the calendars committee,  
16 they consult the rules and they decide which bills go on  
17 the calendar.  
18 Q. What is the process for considering a bill when  
19 it's assigned to one of these calendars?  
20 A. You mean by the House?  
21 Q. Correct.  
22 A. Well, the speaker lays the bill before the  
23 House.  
24 Q. What does that mean?  
25 A. He lays the bill out and then recognizes the

34

- 1 author of the bill to explain the bill to the members.  
2 Q. And assuming the bill is laid out and the  
3 author is recognized, is it always the case that a bill  
4 will get a vote by the House at that point?  
5 A. No.  
6 Q. What would prevent a bill from getting a vote  
7 even though it's already been laid out before the House?  
8 MR. SWEETEN: You can answer as a general  
9 matter.  
10 A. Oh, just a variety of issues. The member may  
11 not somebody ready. There may be amendments that they  
12 are working on. It could be a timing issue. Any number  
13 of issues.  
14 Q. Who decides when an ultimate vote by the entire  
15 House should occur on a bill?  
16 A. Generally, it's the member of the bill. The  
17 author of the bill will decide when they're ready.  
18 Q. And does the author of the bill have the  
19 authority to call a vote on the bill or does it require  
20 the speaker's involvement?  
21 A. It does.  
22 Q. It does require the speaker's involvement?  
23 A. Yes.  
24 Q. Assuming a bill is -- passes an entire vote of  
25 the House, at that point the bill goes to the Senate; is

35

- 1 that correct?  
2 A. Yes.  
3 Q. I asked you before if there was any  
4 significance to the date on which a bill is filed -- You  
5 know, let's say a bill was filed or introduced on the  
6 last day of the session, would there be time -- could it  
7 even be possible that there would be time to go through  
8 this entire process of assigning a bill to a committee,  
9 voting it out of committee, referring it to the calendar  
10 committee, setting it for a floor vote, having a floor  
11 debate, having a floor vote, finally passing the bill  
12 and sending it to the Senate, is there a reasonable  
13 chance that, you know, a bill introduced that late in  
14 the session could become law?  
15 MR. SWEETEN: Objection. Calls for  
16 speculation, but you can answer.  
17 A. I suppose if there was a suspension of the  
18 rules, I'd have to look at the Constitution, but it  
19 would be very difficult.  
20 Q. Are there ever times when bills are not  
21 referred to a specific committee, but instead are  
22 referred to a committee consisting of the entire House?  
23 A. Like a committee of the whole?  
24 Q. Correct.  
25 A. The rules do allow for a committee of the

36

- 1 whole, but I don't have any memory of us ever doing  
2 that.  
3 Q. So starting with your time as House  
4 parliamentary between 2004 and 2007, you don't recall  
5 any times when the House referred a particular bill to  
6 the committee of the whole House?  
7 A. I don't -- I don't remember that. I can't  
8 recall that at all.  
9 Q. How about between 2009 when you became House  
10 parliamentary again through -- Well, I think you said  
11 your service as chief of staff to the speaker ended --  
12 was it March 2012?  
13 A. Yes.  
14 Q. So from the time you rejoined the House as  
15 parliamentary through the time you left the speaker  
16 staff in March 2012, do you recall any times when the  
17 House referred -- or, excuse me -- the speaker referred  
18 a bill to the committee of the whole House rather than a  
19 particular committee?  
20 A. No.  
21 Q. Do you have any understanding as to why the  
22 rules of the House would permit a bill to be assigned to  
23 the committee of the whole House rather than a  
24 particular committee?  
25 A. No.

<p style="text-align: center;">41</p> <p>1 names is listed under a byline here?</p> <p>2 A. No. Other than they would be, I guess,</p> <p>3 co-authors, no.</p> <p>4 Q. Then it looks like that on March 2nd, 2005, the</p> <p>5 bill was read for the first time?</p> <p>6 A. Yeah, that's what the history says.</p> <p>7 Q. And does that mean that the bill is read aloud</p> <p>8 on the House floor?</p> <p>9 A. Yes.</p> <p>10 Q. And then it looks like on that same day, the</p> <p>11 bill was referred to -- it says, "Referred to</p> <p>12 elections." Would you understand that to mean the House</p> <p>13 committee on elections?</p> <p>14 A. Yes.</p> <p>15 Q. And can you tell me generally what the subject</p> <p>16 matter of that committee covers?</p> <p>17 A. Okay. Just election law, campaign finance</p> <p>18 law.</p> <p>19 Q. And then it looks like eight dates later on,</p> <p>20 March 10th, 2005, the bill was referred directly to</p> <p>21 subcommittee by the chair. Do all the committees in the</p> <p>22 House have subcommittees?</p> <p>23 A. Any committee can have a subcommittee.</p> <p>24 Q. And what is the -- what is the purpose of</p> <p>25 having subcommittees?</p>	<p style="text-align: center;">43</p> <p>1 Q. It says on that same day, April 4th, that "A</p> <p>2 committee substitute was considered in the committee."</p> <p>3 What is a committee substitute?</p> <p>4 MR. SWEETEN: Again, and you can answer as</p> <p>5 to the general meaning of that.</p> <p>6 A. Under the rules of a committee substitute, it's</p> <p>7 just like an amended version or a different version of</p> <p>8 the original bill.</p> <p>9 Q. And then, again, on that same day, it states</p> <p>10 that "the bill was reported favorably as substituted."</p> <p>11 What does that mean to be reported favorably?</p> <p>12 MR. SWEETEN: You can answer as a general</p> <p>13 matter.</p> <p>14 A. It means that they voted it out of committee.</p> <p>15 Q. And then it says that "a committee report was</p> <p>16 filed with the committee coordinator." What's a --</p> <p>17 What's a committee report?</p> <p>18 MR. SWEETEN: Same instruction.</p> <p>19 A. That's under the rules in the official</p> <p>20 documentation of the -- of the bill and the proceedings</p> <p>21 in committee.</p> <p>22 Q. And who is the committee coordinator?</p> <p>23 A. The committee coordinator is the person that</p> <p>24 administratively oversees the committees, the processing</p> <p>25 of paperwork, things like that.</p>
<p style="text-align: center;">42</p> <p>1 MR. SWEETEN: You can answer as a</p> <p>2 matter of general procedure.</p> <p>3 A. So rules allow for subcommittees whenever the</p> <p>4 chairman of the committee thinks it's appropriate to</p> <p>5 appoint a subcommittee.</p> <p>6 Q. Then it looks like in the March 2005, the bill</p> <p>7 was considered and the testimony was taken in a</p> <p>8 subcommittee; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. It says that on March 17, 2005, the bill was</p> <p>11 left pending in subcommittee.</p> <p>12 A. Yes.</p> <p>13 Q. What does that mean?</p> <p>14 A. It means that it wasn't voted out of committee.</p> <p>15 It was just left in the committee for a -- for whatever</p> <p>16 reason.</p> <p>17 Q. And then on April 4, 2005, it appears that the</p> <p>18 bill was recalled from the subcommittee.</p> <p>19 A. M-hm.</p> <p>20 Q. What does that mean to recall a bill from a</p> <p>21 subcommittee?</p> <p>22 MR. SWEETEN: You can answer as a general</p> <p>23 matter of what that means.</p> <p>24 A. Under the rules, you can bring a bill back from</p> <p>25 a subcommittee and bring it before the entire committee.</p>	<p style="text-align: center;">44</p> <p>1 Q. Does that person work for the Speaker of the</p> <p>2 House?</p> <p>3 A. The committee coordinator, I believe, is -- I</p> <p>4 believe they are a House officer or they work for the</p> <p>5 House at least.</p> <p>6 Q. Looks like on April 7th, 2005, it looks like</p> <p>7 the committee report was sent to calendars. Do you see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. And when it was sent to calendars, is that the</p> <p>11 process you were describing before when there's a</p> <p>12 process by which the bill gets assigned to a particular</p> <p>13 type of calendar --</p> <p>14 A. Yes.</p> <p>15 Q. -- in the House? What does it mean when it</p> <p>16 says that the bill was on April 14th, 2005 considered in</p> <p>17 calendars?</p> <p>18 MR. SWEETEN: On these -- And I just want</p> <p>19 to make sure my instruction's clear. He can ask you</p> <p>20 questions about as a general matter what these -- what</p> <p>21 these mean. Now, he's handed you this in the context of</p> <p>22 the specific bill, 1706. I'm just going to caution you</p> <p>23 that when you are answering these questions, don't</p> <p>24 reveal any specific mental impressions or thoughts about</p> <p>25 the specific legislation or interpret it as to this</p>

45

1 bill, but you can answer these questions as phrased. I  
 2 don't have a problem with those.  
 3 MR. HARRIS: Mr. Sweeten, just to clarify,  
 4 in Ms. Davis's capacity as parliamentarian, putting  
 5 aside her role as chief of staff, what is the basis of  
 6 any objection with respect to her own mental impressions  
 7 or opinions?  
 8 MR. SWEETEN: Those would be subject to  
 9 the legislative privilege. She's also got an  
 10 attorney-client relationship based upon that position,  
 11 and so there are two potential privileges that apply.  
 12 Legislative privilege does apply, and so when -- and I  
 13 haven't objected to you asking these questions on what  
 14 the general parliamentary procedure is, and she will  
 15 continue to answer. I'm just making sure that we're  
 16 clear that that's not going to reveal her specific  
 17 thoughts or mental impressions about legislation, so you  
 18 can continue.  
 19 Q. (BY MR. HARRIS) Ms. Davis, going back, I  
 20 believe you stated that when I asked you before whether  
 21 you believed you had an attorney-client relationship  
 22 with the speaker, this is Speaker Craddick we are  
 23 referring to, I think, at this time -- Well, let me ask  
 24 you this. During 2005 was Speaker Craddick the speaker  
 25 of the House?

46

1 A. Yes.  
 2 Q. Did you consider yourself to have an  
 3 attorney-client relationship with Speaker Craddick in  
 4 2005?  
 5 A. In your capacity as parliamentarian, you have  
 6 a -- you have a relationship with the -- with the  
 7 presiding officer in his capacity as the presiding  
 8 officer as a House officer.  
 9 Q. And that relationship you would describe as an  
 10 attorney-client relationship?  
 11 A. Yeah, legislative attorney-client.  
 12 Q. Okay. So I believe the question pending was  
 13 what does it mean for a bill to be considered in  
 14 calendars?  
 15 A. It just means that the calendars committee is  
 16 looking at the bill and deciding whether or not to set  
 17 the bill.  
 18 Q. Who sits on the calendars committee?  
 19 A. Just House members.  
 20 Q. Who appoints the members of the calendars  
 21 committee?  
 22 A. The speaker.  
 23 Q. Who appoints members of the other committees?  
 24 A. The speaker.  
 25 Q. And then it looks like on April 19, 2005, the

47

1 bill was placed on the general state calendar.  
 2 A. Yes.  
 3 Q. It looks like the excerpt of the results I  
 4 handed you does not describe the general state  
 5 calendar, but are you able to describe what that -- the  
 6 purpose of that calendar is?  
 7 A. I'd have to see it -- see the rules, but it's  
 8 just general bills, I guess.  
 9 Q. This looks -- Okay. On that same day, April  
 10 19th, when you stated that the bill had been placed or  
 11 at least appears the bill was placed on the general  
 12 state calendar, that the bill was recommitted to  
 13 committee. Do you see that entry?  
 14 A. M-hm.  
 15 Q. What does that mean?  
 16 A. It just means that it was sent back to  
 17 committee -- back to the elections committee.  
 18 Q. Is that a normal procedure? And by normal, I  
 19 mean, is it typical that once a bill is placed on a  
 20 calendar like the general state calendar, that it would  
 21 be recommitted to committee?  
 22 A. It's not unusual.  
 23 Q. As a general matter, why would a bill be  
 24 recommitted to committee as opposed to proceeding to  
 25 consideration by the House?

48

1 A. Maybe for additional work or, you know,  
 2 maybe -- just could be any reason to work on the bill.  
 3 The bill could have a problem. It could have a  
 4 procedural problem. There could be a point of order, a  
 5 variety of things.  
 6 Q. It looks like once the bill was recommitted to  
 7 committee, there was a version that was substituted  
 8 again.  
 9 A. M-hm.  
 10 Q. It actually looks like that all happened on the  
 11 same day, April 19th; is that right?  
 12 A. Yes.  
 13 Q. Then it looks like the process repeated itself  
 14 and the committee report was filed with the court and  
 15 the committee coordinator on April 20th; is that right?  
 16 A. Yes.  
 17 Q. Then the bill was sent back to calendars and it  
 18 was, again, considered in calendars on April 29, 2005;  
 19 is that right?  
 20 A. Yes.  
 21 Q. And then, again, on May 2nd it was, I guess,  
 22 for the second time placed on the general state  
 23 calendar; is that right?  
 24 A. Yes.  
 25 Q. On May 2nd, 2005, the bill was read for a



<p style="text-align: center;">49</p> <p>1 second time; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Does that refer to reading the bill for another</p> <p>4 time on the House floor?</p> <p>5 A. That's correct, laying it out before the House.</p> <p>6 Q. And at that point looks like throughout</p> <p>7 May 2nd, various amendments were considered by the House</p> <p>8 and vote; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Further down in the list of things that</p> <p>11 happened on May 2nd, I see an entry that the bill was</p> <p>12 passed to engrossment as amended. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. What does that mean, passed to engrossment as</p> <p>15 amended?</p> <p>16 A. It just -- It means passed through the third</p> <p>17 ringing.</p> <p>18 Q. What's required in order for a bill to be</p> <p>19 passed to the third reading?</p> <p>20 A. A majority of those present.</p> <p>21 Q. A majority of those present have to vote to</p> <p>22 pass the bill to the third reading?</p> <p>23 A. Yes.</p> <p>24 Q. And that's -- it looks like that's what</p> <p>25 happened here?</p>	<p style="text-align: center;">51</p> <p>1 Q. Do you recall a point of order being raised</p> <p>2 with respect to HB1706?</p> <p>3 MR. SWEETEN: You can testify as to</p> <p>4 matters of public record.</p> <p>5 A. Yeah, I don't.</p> <p>6 (League Exhibit 5 marked.)</p> <p>7 Q. I would ask that this document be marked as</p> <p>8 League Exhibit 5.</p> <p>9 Ms. Davis, have you had a few moments to</p> <p>10 look over the document that was marked at Exhibit 5?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recognize this to be an excerpt or</p> <p>13 does this appear to be an excerpt from the House Journal</p> <p>14 of May 3rd, 2005?</p> <p>15 A. Yes.</p> <p>16 Q. And May 3rd, 2005 was the date that's reflected</p> <p>17 on the bill history we were looking at for HB1706 as the</p> <p>18 date on which a point of order was sustained; is that</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. And looking at the middle of the first page of</p> <p>22 what I handed you, which has Page No. 2543 at the top</p> <p>23 right, it states that "Representative Burnam raised a</p> <p>24 point of order against further consideration of HB1706</p> <p>25 under Rule 6, Section 1(a), Rule 6, Section 15 and Rule</p>
<p style="text-align: center;">50</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And then looks like the next day,</p> <p>3 May 3rd, the bill was read for a third time; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And it looks like on that same day, May 3rd,</p> <p>7 additional amendments were considered?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, I see an entry on May 3rd that says</p> <p>10 that a point of order was sustained?</p> <p>11 A. Yes.</p> <p>12 Q. What is a point of order?</p> <p>13 A. It's an objection under the rules to -- to a</p> <p>14 procedural defect of some sort.</p> <p>15 Q. And who can make a point of order?</p> <p>16 A. The member -- A member can raise a point of</p> <p>17 order.</p> <p>18 Q. And when a point of order is raised, what</p> <p>19 happens then?</p> <p>20 MR. SWEETEN: You can answer as a general</p> <p>21 matter.</p> <p>22 A. The member will consult with the speaker and</p> <p>23 bring their objection before the speaker, and the</p> <p>24 speaker consults with the parliamentarian and then makes</p> <p>25 a ruling.</p>	<p style="text-align: center;">52</p> <p>1 6, Section 17 of the House rules on the grounds that the</p> <p>2 bill was placed out of order on the calendar." Do you</p> <p>3 see where it says that?</p> <p>4 A. Yes.</p> <p>5 Q. Does reading that help to refresh your</p> <p>6 recollection as to a point of order that was made with</p> <p>7 respect to HB1706?</p> <p>8 A. It just -- It just says that he raised the</p> <p>9 journal, just reflects that he raised the point of</p> <p>10 order.</p> <p>11 Q. And reading this sitting here today, does this</p> <p>12 cause you to remember him raising this point of order?</p> <p>13 A. I don't remember him raising it. I don't have</p> <p>14 any reason to dispute what the journal says about it.</p> <p>15 Q. And point of order under Rule 6, these various</p> <p>16 sections of Rule 6 on the grounds that the bill was</p> <p>17 placed out of order on the calendar, what do you</p> <p>18 understand that to mean in terms of the point of order</p> <p>19 being raised with respect to HB1706?</p> <p>20 MR. SWEETEN: In answering that, don't</p> <p>21 reveal your thoughts and mental impressions about the</p> <p>22 bill. You can answer as a general matter if you know</p> <p>23 what that means.</p> <p>24 A. That it was in the wrong place -- you know, on</p> <p>25 the wrong place on the calendar. Maybe, you know,</p>

53

1 listed wrong on the calendar or something like that.  
 2 Q. If you look at the next page of Exhibit 5 under  
 3 the heading afternoon session and then a further heading  
 4 that says HB1706, Pending Business, it states "That a  
 5 point of order against further consideration of HB1706  
 6 was pending prior to lunch recess on the grounds that  
 7 the bills were placed on today's calendar out of order."  
 8 As a general matter, what does it mean to  
 9 place a bill on a calendar out of order? Does that  
 10 mean -- Well, let me ask you.  
 11 A. It just means that it's in the wrong order on  
 12 the calendar. Maybe it was listed one way instead of  
 13 the other way or a bill was put in front of it that  
 14 should not have been there, a clerical error or  
 15 something like that.  
 16 Q. Does it mean that the bill was being considered  
 17 on the wrong day?  
 18 MR. SWEETEN: Are you asking her does this  
 19 text mean that or can you specify what your question is?  
 20 Q. First, I'll ask, as a general matter, if the  
 21 bill were being considered on the wrong day, would that  
 22 -- and it were being considered, would that be a case  
 23 where a bill was being taken out of order?  
 24 A. On the wrong legislative day or the wrong  
 25 calendar day? This just says placed on that date's

54

1 calendar out of order and that means that it was not  
 2 listed correctly on that calendar on that day.  
 3 Q. And it further states here that the speaker  
 4 sustained the point of order; is that right?  
 5 A. Yes.  
 6 Q. Looking back at the bill history, it looks like  
 7 the bill has continued to be considered on May 3rd,  
 8 2005.  
 9 A. Yes.  
 10 Q. Does that help you to explain the manner in  
 11 which this bill was subject to a sustained point of  
 12 order?  
 13 MR. SWEETEN: Objection to the question as  
 14 vague. Don't reveal matters of privilege in answering  
 15 the question, your thoughts or mental impressions about  
 16 a specific piece of legislation. You can answer based  
 17 on the text of what's in front of you, but don't reveal  
 18 privilege.  
 19 A. Yeah. This means that the bill was taken out  
 20 of order, that the chair ruled that the bill taken out  
 21 of order and that they put the bill on another calendar  
 22 for later in the day.  
 23 Q. Then it looks like later on May 3rd, there is  
 24 an entry that says the bill passed as amended. Does  
 25 that mean that a majority of those House members present

55

1 voted for the bill?  
 2 A. M-hm.  
 3 Q. And then.  
 4 A. Yes.  
 5 Q. -- it looks like -- Thank you. I should remind  
 6 you about that, but I appreciate you remembering to give  
 7 a verbal answer. And then it looks like on May 4th, the  
 8 next day, 2005, the bill was reported engrossed.  
 9 A. Yes.  
 10 Q. What does it mean for a bill to be reported  
 11 engrossed?  
 12 MR. SWEETEN: You can answer as a general  
 13 matter.  
 14 A. That's the final House version of the bill that  
 15 was sent to the Senate.  
 16 Q. And then it looks like the bill was received  
 17 from the House by the Senate that same day, May 4th,  
 18 2005; is that right?  
 19 A. Yes.  
 20 Q. Is there any special meaning to the term  
 21 received from the House?  
 22 A. That means it went over on a message to the  
 23 Senate.  
 24 Q. What does it mean for it to go over on a  
 25 message?

56

1 A. It means that it goes over on a piece of paper  
 2 and it's given to the Senate clerk or the secretary of  
 3 the Senate.  
 4 Q. And then it looks like the next day, May 5th,  
 5 2005, the bill was read for the first time in the Senate  
 6 and then that same day referred to state affairs. Do  
 7 you see that?  
 8 A. Yes, I see that.  
 9 Q. And do you understand state affairs to mean  
 10 Senate State Affairs Committee?  
 11 A. Yes.  
 12 Q. Okay. Since that's the last entry for this  
 13 bill, what do you understand about what happened to the  
 14 bill once it went to the senate?  
 15 A. I don't know what happened.  
 16 Q. Assuming this is a complete legislative  
 17 history, do you agree that it reflects that the bill did  
 18 not pass the Senate?  
 19 MR. SWEETEN: Since this is a matter of  
 20 public record, you can answer based on the public  
 21 record.  
 22 A. This looks like the last action was that it  
 23 went to state affairs and stayed in state affairs until  
 24 the session was over.  
 25 Q. And if the bill had passed the Senate, the last

<p style="text-align: center;">65</p> <p>1 A. I have my driver's license.</p> <p>2 Q. Anything else?</p> <p>3 A. I think I have my bar card and that's it.</p> <p>4 Q. Do you own a copy of your birth certificate?</p> <p>5 A. Yes.</p> <p>6 Q. Were you born in the State of Texas?</p> <p>7 A. Yes.</p> <p>8 Q. If you lost your birth certificate, would you</p> <p>9 know where to go to get another copy?</p> <p>10 A. Yes.</p> <p>11 Q. Where would that be?</p> <p>12 A. To the health department -- Bureau of Vital</p> <p>13 Statistics, Health Department.</p> <p>14 Q. Have you ever heard of -- if I use the term</p> <p>15 in-person voter fraud, do you have some understanding of</p> <p>16 what that means?</p> <p>17 A. No.</p> <p>18 Q. Okay. I'm going to use the term to mean an</p> <p>19 instance where someone shows up at the polls claiming to</p> <p>20 be a registered voter when that person is not in fact a</p> <p>21 registered voter when he or she is claiming to be; is</p> <p>22 that okay?</p> <p>23 A. M-hm.</p> <p>24 Q. Have you ever heard of an instance of such</p> <p>25 in-person voter fraud?</p>	<p style="text-align: center;">67</p> <p>1 council, legislative staffers, and our position is even</p> <p>2 if a party has waived with respect to it, that to the</p> <p>3 extent if she's working for the speaker, for example,</p> <p>4 and he has not waived, that that privilege attaches to</p> <p>5 the communication. With all that, you can answer the</p> <p>6 question as long as you are not revealing a privileged</p> <p>7 communication.</p> <p>8 A. No.</p> <p>9 Q. All right. Ms. Davis, is this a good time for</p> <p>10 you to take lunch?</p> <p>11 A. Sure.</p> <p>12 MR. HARRIS: I think we are at a natural</p> <p>13 stopping point, so why don't we do that?</p> <p>14 THE WITNESS: Okay.</p> <p>15 (Recess from 12:05 p.m. to 12:31 p.m.)</p> <p>16 Q. (BY MR. HARRIS) Ms. Davis, are you ready to go</p> <p>17 back on the record?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall a bill concerning voter</p> <p>20 identification requirements for Texas voters being</p> <p>21 introduced during the 2007 House session?</p> <p>22 A. No.</p> <p>23 (League Exhibit 6 marked.)</p> <p>24 Q. I'll ask that this document be marked as League</p> <p>25 Exhibit 6.</p>
<p style="text-align: center;">66</p> <p>1 A. No.</p> <p>2 Q. In your capacity as chief of staff to Speaker</p> <p>3 Straus, do you ever recall receiving any complaints from</p> <p>4 constituents regarding instances of in-person voter</p> <p>5 fraud?</p> <p>6 A. No.</p> <p>7 Q. How about just voter fraud generally? Did you</p> <p>8 ever hear constituents complain about voter fraud in</p> <p>9 Texas in general?</p> <p>10 MR. SWEETEN: While she was with the</p> <p>11 speaker's office you are asking, Adam?</p> <p>12 MR. HARRIS: Let's start with that, sure.</p> <p>13 MR. SWEETEN: This is from constituents,</p> <p>14 just so I'm clear.</p> <p>15 MR. HARRIS: Correct.</p> <p>16 A. No.</p> <p>17 Q. How about at any other time before or even</p> <p>18 after you worked for -- as chief of staff for Speaker</p> <p>19 Straus, were you aware -- or did you hear complaints</p> <p>20 of -- Let's say putting aside any -- putting aside any</p> <p>21 member of the Texas House or Senate that has asserted</p> <p>22 privilege in this case, have you heard complaints from</p> <p>23 anybody else about voter fraud in Texas?</p> <p>24 MR. SWEETEN: Also, don't reveal</p> <p>25 communications with state agencies, the Texas ledge</p>	<p style="text-align: center;">68</p> <p>1 Ms. Davis, please take a few moments to</p> <p>2 familiarize yourself with this document.</p> <p>3 A. Okay.</p> <p>4 Q. Ms. Davis, this appears to be a copy of a House</p> <p>5 Bill No. 218; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. At the top at the first page it says, "House</p> <p>8 engrossment"; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. What do you understand that to mean?</p> <p>11 A. That's the bill as it's passed on third reading</p> <p>12 out of the House.</p> <p>13 Q. Do you recall anything about the debate over</p> <p>14 this Bill HB218?</p> <p>15 A. No.</p> <p>16 Q. Now, you said that the language at the top</p> <p>17 stating House engrossment refers to the fact that this</p> <p>18 bill passed a vote of the House after the third reading;</p> <p>19 is that right?</p> <p>20 A. Right.</p> <p>21 Q. At that point the bill would go to the Senate</p> <p>22 generally; is that right?</p> <p>23 A. Right.</p> <p>24 Q. Do you recall what happened to this bill when</p> <p>25 it went to the Senate?</p>

69

1 MR. SWEETEN: You can answer as to matters  
2 of public record.  
3 A. No, I don't.  
4 (League Exhibit 7 marked.)  
5 Q. I ask that this document be marked as League  
6 Exhibit 7. And, Ms. Davis, please take a few moments to  
7 familiarize yourself with this document, Exhibit 7.  
8 A. Okay.  
9 Q. Mrs. Davis, this appears to be a legislative  
10 history of HB218 from the 80th regular session.  
11 A. Right.  
12 Q. Is that right?  
13 A. Yes.  
14 Q. And this appears to reflect that HB218 was  
15 reported engrossed by the House on April 24th, 2007; is  
16 that right?  
17 A. Yes.  
18 Q. Then this states that the bill was read for the  
19 first time on April 26, 2007, is that right, in the  
20 Senate? Excuse me.  
21 A. Yes.  
22 Q. And then it was referred to the Senate state  
23 affairs committee; is that right?  
24 A. Yes.  
25 Q. Do you have any understanding as to what the

70

1 subject matter jurisdiction covered by the state affairs  
2 committee in the Senate is?  
3 A. I don't.  
4 Q. Then it appears that on May 1st, 2007, the bill  
5 was reported favorably as substituted by the committee;  
6 is that right?  
7 A. Yes.  
8 Q. And then on May 2nd, it was placed on the  
9 Senate intent calendar; is that right?  
10 A. M-hm.  
11 Q. Do you have any understanding as to what the  
12 Senate intent calendar is?  
13 A. It's the Senate calendar for floor action for  
14 bills that they'll take up on the Senate floor.  
15 Q. On May 15th, 2007, I see that there is an entry  
16 that the -- it says "Rule suspended (regular order of  
17 business)."  
18 A. M-hm. Yes.  
19 Q. Do you have any understanding as to what that  
20 means?  
21 A. I believe that's what the Senate does to take a  
22 bill up earlier than they -- earlier than the rules  
23 would allow.  
24 Q. And this reflects that there was a record vote  
25 taken on May 15th, 2007?

71

1 A. Yes.  
2 Q. Do you know if that would be the vote to  
3 suspend the regular order of business?  
4 A. Yes.  
5 Q. Yes, it would be that vote?  
6 A. Yes. It looks as though that's right, yeah,  
7 that it was a record vote on that suspension.  
8 Q. M-hm. It looks on that same day the bill was  
9 read for a second time in the Senate.  
10 A. Yes.  
11 Q. And then it says, "Vote reconsidered on that  
12 same day." Do you see that?  
13 A. Yes.  
14 Q. Do you know what that means, "vote  
15 reconsidered"?  
16 A. In this context, I don't know -- I don't know  
17 what they did.  
18 Q. Again, reading from the entries for May 15th,  
19 2007, that the motion to suspend regular order fails.  
20 A. Yes.  
21 Q. Do you understand that to mean that there were  
22 not sufficient votes to suspend the regular order of  
23 business and considered the bill out of the regular  
24 order?  
25 MR. SWEETEN: You can testify based on the

72

1 text.  
2 A. Yes, that's right.  
3 Q. And then it looks like the last two entries  
4 reflect a record vote May 15th, 2007; is that right?  
5 A. Yes.  
6 Q. And then there was a co-sponsor authorized on  
7 May 16th, 2007; is that right?  
8 A. Yes.  
9 Q. And this legislative history appears to reflect  
10 that HB218 did not pass a full vote of the Senate; is  
11 that right?  
12 A. Yes, that's right.  
13 Q. Looking back to the text of HB218, do you have  
14 any understanding of the general purpose of the  
15 legislature in attempting to enact HB218?  
16 A. I don't.  
17 Q. Do you have any understanding of the general  
18 purpose of HB218?  
19 A. No.  
20 Q. I think you stated previously with respect to  
21 House Bill 1706 from 2005 that the general purpose was  
22 to protect the integrity of the election system. Do you  
23 recall that testimony?  
24 A. Yes.  
25 Q. Do you have any understanding as to the source

73

1 of the legislative language in HB218?

2 MR. SWEETEN: Don't answer the question as

3 it will require you to reveal matters -- as it could

4 require you to reveal matters of legislative privilege.

5 MR. HARRIS: I think we actually resolved

6 this one last time by your stating, Mr. Sweeten, that

7 the witness could answer yes or no as to whether she was

8 aware of the sources of legislative language.

9 MR. SWEETEN: That she was aware of the

10 source of language of 218.

11 MR. HARRIS: Correct.

12 MR. SWEETEN: Then we'll allow her a yes

13 or no answer.

14 A. No.

15 Q. Do you recall -- Without yet divulging the

16 substance of any such discussions, do you recall having

17 discussions with any members of the House regarding

18 HB218?

19 A. No.

20 Q. I'm not sure I asked you that question. With

21 respect to HB1706, the bill we looked at from 2005

22 concerning voter ID, do you recall having any

23 discussions with members of the House about -- Again,

24 I'm not asking you to reveal the substance, but do you

25 recall any discussions with members of the House about

74

1 HB1706?

2 A. No.

3 Q. Do you know whether the lieutenant governor of

4 Texas can directly himself introduce legislation?

5 MR. SWEETEN: You can answer as a general

6 matter.

7 A. I don't -- I do not know the answer to that --

8 the legal answer to that. I've never seen that, but I

9 do not know.

10 Q. M-hm. Do you recall a situation in 2009, now

11 skipping ahead two years, when Representative Betty

12 Brown attempted to introduce a voter ID proposal as an

13 amendment to another bill?

14 MR. SWEETEN: You can refer to matters of

15 the public record in answering.

16 A. Yes.

17 Q. What do you recall about that situation?

18 MR. SWEETEN: Okay. That could very well

19 ask you to reveal matters of privilege. Don't do so.

20 You can reveal matters of public record.

21 A. I just remember her trying to do it. I

22 don't -- I don't remember more -- anymore than that.

23 Q. Do you remember anything about the substance of

24 the amendment that Representative Brown was attempting

25 to offer?

75

1 A. No. I believe it was a voter ID amendment, but

2 I don't remember what it did.

3 Q. And do you remember the -- what -- the

4 legislation that Ms. Brown was attempting to amend to

5 include voter identification requirements, do you recall

6 what that understanding legislation was about?

7 A. No.

8 (League Exhibit 8 marked.)

9 Q. I'll ask that this be marked as League

10 Exhibit 8. Please take a few moments to review

11 Exhibit 8.

12 A. Okay.

13 Q. Okay. So this appears to be an article from

14 the Austin Statesman.

15 A. Yes.

16 Q. And it's dated March 30th, 2009; is that right?

17 A. Yes.

18 Q. Okay? And this article -- Does this article

19 refer to the situation we were just speaking with in

20 which Representative Brown attempted to introduce an

21 amendment to a bill concerning voter ID requirements?

22 A. Yes.

23 MR. SWEETEN: You can answer about what

24 the article says. Don't reveal privileged matters.

25 Q. In the first two paragraphs it states that, "A

76

1 could have intense moment in the Texas House passed

2 without a blow-up today with a handshake between House

3 Speaker Joe Straus and Representative Betty Brown,

4 Republican of Terrell, according to Brown. Brown said

5 she and Straus shook hands on his promise to ensure

6 legislation requiring voters to present photo ID or

7 identifying documents at the polls would get a full

8 hearing before the House committee on elections." Do

9 you see where it says that?

10 A. Yes.

11 Q. Were you at all involved or present for any

12 discussions between Ms. Brown and Speaker Straus

13 concerning any promises that voter ID would be heard

14 before the committee on elections?

15 A. No. That would have been a private

16 conversation between them.

17 Q. Skipping down a few paragraphs, it says that

18 "Perspective: Brown couldn't have been pleased when it

19 came clear early this session that Smith would be the

20 House's lead dog on the voter ID front. Two years ago,

21 Brown was author of the voter ID mandate that won House

22 approval before petering out in the Senate where

23 Republicans proponents couldn't hurdle the two-thirds

24 margin usually needed to take up measures for floor

25 action." Do you see that?

77

1 A. Yes.

2 Q. Is that paragraph referring to what we saw in  
3 the legislative history previously in which there  
4 weren't sufficient votes to suspend the regular order of  
5 business in the Senate?

6 MR. SWEETEN: Don't reveal matters of  
7 legislative privilege in answering the question, okay?

8 A. Yes. That refers to the Senate action -- the  
9 Senate actions on the legislative report.

10 Q. And then the next sentence is in a  
11 parenthetical, but it says, "This year Senate  
12 Republicans revised the body's rules enabling action on  
13 the voter ID topic by a simple majority vote." Do you  
14 see that?

15 A. Yes.

16 Q. Are you aware of what this sentence is  
17 referring to?

18 MR. SWEETEN: Don't answer the question as  
19 phrased. It would require you to reveal matters of  
20 legislative privilege and interpret the words on this  
21 page, and you don't have to do that with respect to  
22 legislation.

23 Q. I'm not sure I follow the objection, but let me  
24 try it another way.

25 Were you aware or are you aware as a

78

1 matter of public knowledge of the Senate Republicans  
2 changing the rules of the Senate with respect to the  
3 topic of special orders and voter ID?

4 A. Yes.

5 Q. When did you first learn about such a change by  
6 the Senate Republicans?

7 MR. SWEETEN: You can refer to matters of  
8 public record.

9 A. When they debated it on the Senate floor during  
10 the rules debate.

11 Q. Do you have any understanding as to why the  
12 Senate changed rules with respect to special orders and  
13 the topic of voter ID?

14 MR. SWEETEN: Do not answer. Calls for  
15 matters of legislative privilege. You can refer to  
16 matters of the public record in answering the question.

17 MR. HARRIS: Let's step back. I think the  
18 first question was do you have any understanding. May  
19 she answer that, Mr. Sweeten?

20 A. Any understanding of?

21 Q. Of why the Senate Republicans revised their  
22 rules concerning special rules of voter ID.

23 A. No.

24 Q. Are you aware of any publicly stated reasons by  
25 the Senate Republicans with respect to why they changed

79

1 the rules regarding special orders and voter ID?

2 A. No. I didn't really listen to the debate. I  
3 just knew they took it up on -- when they did the rules,  
4 but I didn't -- I am not familiar with what they said.

5 Q. Okay. Well, I think we'll come back to that  
6 topic in just a few moments, but we can finish with  
7 Exhibit 8 for now.

8 In the next paragraph starting with, "In a  
9 surprise move," it states is that, "Brown had filed her  
10 ID proposal as an amendment to legislation by  
11 Representative Frank Corte, Republican of San Antonio,  
12 relating to providing a ballot by emails to voters in  
13 the military and living overseas." Do you see that?

14 A. Yes.

15 Q. And in the next paragraph it states, I believe  
16 this is -- I'll ask you, but -- Excuse me. States,  
17 "Brown told me that House Parliamentarian Denise Davis  
18 advised today that her amendment wasn't germane to  
19 Corte's proposal, though Brown said it also was clear an  
20 ultimate ruling would have been up to Straus." Do you  
21 see that?

22 A. Yes, I do.

23 Q. Do you recall whether there was any public  
24 decision made that the -- or, I guess, a point of order  
25 sustained that the amendment offered by Ms. Brown was

80

1 not germane to the legislation at issue?

2 MR. SWEETEN: You can answer as to public  
3 record only.

4 A. I don't remember a point of order being raised  
5 at all. I don't remember.

6 Q. Do you remember ruling on the question of  
7 whether or not Ms. Brown's voter ID amendment was  
8 germane?

9 MR. SWEETEN: I assume a ruling is a  
10 public record, so if it's a public record, you can  
11 answer that question.

12 A. What -- Do I remember ruling on whether or not  
13 this was germane in a public ruling?

14 Q. Well, let me ask it this way. The author of  
15 the article states that Brown told him that you, Ms.  
16 Davis --

17 A. Right.

18 Q. -- advised Ms. Brown --

19 A. Right.

20 Q. -- that her amendment wasn't germane to the  
21 proposal, and Ms. Brown apparently told that to a  
22 reporter making public and certainly waiving any  
23 privilege with respect to it. So my question is is this  
24 accurate? Did you in fact tell Ms. Brown that her  
25 amendment was not germane?



<p style="text-align: center;">81</p> <p>1 MR. SWEETEN: One second. I want the</p> <p>2 question re-read, please.</p> <p>3 (Requested portion was read.)</p> <p>4 MR. SWEETEN: No, she's not going to</p> <p>5 answer. Even assuming you're correct that Ms. Brown has</p> <p>6 waived privilege, she is not going to answer the</p> <p>7 question because, one, I don't think Ms. Brown has</p> <p>8 provided any such waiver as to that, so -- and she's not</p> <p>9 going to answer questions as to communications she had</p> <p>10 with Betty Brown, so I think that would be subject to</p> <p>11 the privilege. I'm going to instruct you not to answer</p> <p>12 the question.</p> <p>13 MR. HARRIS: Mr. Sweeten, do you agree</p> <p>14 that had Ms. Brown communicated to the Austin Statesmar</p> <p>15 what Ms. Davis told Ms. Brown, that that would</p> <p>16 constitute a waiver of privilege over such a statement</p> <p>17 given that?</p> <p>18 MR. SWEETEN: I don't necessarily agree</p> <p>19 with that. In any event, there is no suggestion --</p> <p>20 there's been no waiver of legislative privilege that I'm</p> <p>21 aware of from Ms. Brown, and she's not going waive her</p> <p>22 privilege. So, in any event, it's not of no moment. So</p> <p>23 I'm going to instruct her not to answer based on</p> <p>24 legislative privilege.</p> <p>25 Q. Would a voter ID requirement such as we saw in</p>	<p style="text-align: center;">83</p> <p>1 number of factors.</p> <p>2 Q. Can you give me some instances in which you</p> <p>3 publicly ruled that an amendment to a bill was not</p> <p>4 germane?</p> <p>5 A. I mean, we look at hundreds of amendments, so</p> <p>6 there have to be things in the journal. Off top of my</p> <p>7 head, I couldn't say.</p> <p>8 (League Exhibit 9 marked.)</p> <p>9 Q. I ask that this document be marked as League</p> <p>10 Exhibit 9. Ms. Davis, this is an excerpt -- I'll</p> <p>11 represent this is an excerpt of a longer document.</p> <p>12 Please take a moment to review the exhibit.</p> <p>13 A. Okay.</p> <p>14 Q. I see that the heading under -- or beginning</p> <p>15 Rule 5.11 says "special orders."</p> <p>16 A. Yes.</p> <p>17 Q. Now, I know these are the Senate rules, but can</p> <p>18 you tell me what a special order is?</p> <p>19 MR. SWEETEN: Objection. Foundation. You</p> <p>20 can answer as a general matter.</p> <p>21 A. The general rule is to a bill that goes sort</p> <p>22 of, I guess, to the front of the line in consideration.</p> <p>23 Q. Do you see in Rule 5.11, Section D where it</p> <p>24 says -- Well, first let me read from Section A to make</p> <p>25 sure we have that foundation established. "Rule 5.11(a)</p>
<p style="text-align: center;">82</p> <p>1 the two previous House bills we've looked at today be</p> <p>2 germane to a -- as an amendment to a bill concerning</p> <p>3 voting by military members?</p> <p>4 MR. SWEETEN: Don't answer the question.</p> <p>5 It would require you to reveal your thoughts and menta</p> <p>6 impressions about legislation that are subject to the</p> <p>7 legislative privilege, and I instruct you not to answer.</p> <p>8 Q. Are you taking your counsel's advice,</p> <p>9 Ms. Davis?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any reason to doubt the author of</p> <p>12 this article's statement starting in the paragraph</p> <p>13 "Brown told me"?</p> <p>14 MR. SWEETEN: Are you asking her -- I</p> <p>15 mean, I think that that would require her to provide her</p> <p>16 thoughts and mental impressions about the veracity of</p> <p>17 that statement. She doesn't have to provide those if</p> <p>18 they would reveal legislative privilege, so I'm going to</p> <p>19 instruct her not to answer that question also.</p> <p>20 Q. As a general matter, what factors do you</p> <p>21 consider in deciding whether an amendment to a bill is</p> <p>22 germane?</p> <p>23 A. I mean, you look at the language of the bill.</p> <p>24 You look at the amendment. You have the -- Listen to</p> <p>25 the explanation of the amendment and the precedent,</p>	<p style="text-align: center;">84</p> <p>1 states that any bill, resolution or other measure may on</p> <p>2 any day be made a special order for a future time of the</p> <p>3 session by an affirmative vote of two-thirds of the</p> <p>4 members present"; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And can you put that into lay terms, explain it</p> <p>7 to someone who's not very familiar with parliamentary</p> <p>8 procedure what that means?</p> <p>9 MR. SWEETEN: Hold on a minute. She's not</p> <p>10 going to interpret Senate rules. She can testify as to</p> <p>11 what a special order is or the general purpose of Rule</p> <p>12 5.11, but she's not going to go down here and give whys</p> <p>13 and what fors and mental processes of these. With that,</p> <p>14 you can go ahead and answer.</p> <p>15 A. Yeah. I'm not an expert on Senate rules, so --</p> <p>16 but a special order means that a bill gets special</p> <p>17 consideration above other bills.</p> <p>18 Q. Is it correct that as a general matter it takes</p> <p>19 a two-thirds vote of those senators present in order for</p> <p>20 something to be made a special order?</p> <p>21 A. That's what this rule says. I think it says</p> <p>22 that.</p> <p>23 Q. And then so reading from Part D of Rule 5.11,</p> <p>24 it states that "Notwithstanding Subsection A of this</p> <p>25 rule, a bill or resolution relating to voter</p>

85

1 identification requirements reported favorably from the  
2 committee of the whole Senate may be set as a special  
3 order for a time at least 24 hours after the motion is  
4 adopted by a majority of the members of the Senate." Do  
5 you see that?

6 A. Yes.

7 Q. How do you understand this Subpart D to affect  
8 the rule that's set out in Part A that we just talked  
9 about?

10 MR. SWEETEN: Don't answer the question.  
11 You are asking for matters of legislative privilege  
12 including her interpretation of the specifics of this  
13 rule. She can give you a general purpose answer as to  
14 what is the general purpose to the extent she even  
15 knows, but she's not going to go through and reveal her  
16 thoughts and mental impressions about the Rule 5.11.  
17 General purpose is acceptable, and so we will allow her  
18 to answer that if she knows.

19 A. Just generally is -- I mean, that a voter ID  
20 can be set as a special order.

21 Q. And in order for a voter ID bill to be set as a  
22 special order, this 5.11(d) would require only a  
23 majority of the members of the Senate to vote to make it  
24 a special orders; is that right?

25 MR. SWEETEN: You can answer based on the

87

1 Senate rules carved out a particular type of legislation  
2 from the general rules governing special orders?

3 MR. SWEETEN: Objection. Foundation.

4 Objection. Calls for speculation.

5 A. I don't know.

6 Q. Can I take that to mean you are not aware of  
7 any other instances besides voter identification?

8 A. Right. I'm not sure. They changed the rules.  
9 I don't know the answer to that.

10 Q. And when we looked at that article from  
11 March 2009 and it referred to a special rule governing  
12 voter identification with respect to special orders, is  
13 this the type of special rule that you take the article  
14 to be referring to?

15 MR. SWEETEN: Hold on a minute. You are  
16 asking her to interpret the words in an article that she  
17 hasn't seen before today, and you are asking her is this  
18 the type of rule that is referred to in the article.

19 That is -- First of all, that calls for  
20 her to speculate. Secondly, I think that that would --  
21 could implicate any conversation she's had that were  
22 subject to the legislative privilege and/or her thoughts  
23 and mental processes about a certain legislation  
24 including legislation referred to in this article.

25 So from that standpoint, I object based on

86

1 text of the bill.

2 A. Yeah. It says after the motion is adopted by a  
3 majority of the members of the Senate that it may be set  
4 as a special order.

5 Q. Is there a similar rule to this Rule 5.11 in  
6 the House rules concerning special orders?

7 MR. SWEETEN: You can answer as a general  
8 matter.

9 A. A general rule for special orders?

10 Q. M-hm.

11 A. I believe, yes.

12 Q. Do you know what vote or how many votes are  
13 required in order to make a bill a special order?

14 A. I believe it's two-thirds present, but I'd  
15 have to see the rule.

16 Q. Have you ever seen an instance under -- Let's  
17 say starting with the House rules. Have you ever seen  
18 an instance in which the rule concerning special orders  
19 sets out an exception for a particular type of  
20 legislation such as what we saw in 5.11(d)?

21 A. In the House rules?

22 Q. Correct.

23 A. Not to my knowledge, no.

24 Q. Other than this Rule 5.11(d) in the Senate  
25 rules, are you aware of any other time during which the

88

1 legislative privilege.

2 Q. (BY MR. HARRIS) Ms. Davis, turning back to  
3 Exhibit 8, the article that we were looking at in the  
4 paragraph beginning with the word perspective, I think  
5 we already read from a parenthetical that said, "This  
6 year, Senate Republicans revised the body's rules  
7 enabling action on the voter ID topic by a simple  
8 majority vote." Do you have any understanding as to  
9 what that means?

10 MR. SWEETEN: Don't reveal matters of  
11 legislative privilege in answering this question  
12 including your thought processes about legislation or  
13 conversations that you had with anyone that would be  
14 protected, okay? If you can't answer it without doing  
15 that, then don't answer the question, okay?

16 A. There was -- There was a rules change at the  
17 beginning of the session that was related to voter ID in  
18 the Senate.

19 Q. Did that rules change concern special orders?

20 A. I don't remember the text of it, but that  
21 was -- that was the rule -- that was the rules change  
22 they brought up -- they considered on the first day of  
23 session or at the beginning.

24 Q. Do you know why there was a rules change  
25 concerning voter identification under the Senate rules?

93

1 the extent it would require you to reveal your thoughts,  
2 mental impressions about a specific piece of  
3 legislation. If you cannot do so, do not, and, also, it  
4 calls for speculation.

5 A. I don't know.

6 Q. Are you familiar with the lieutenant governor's  
7 powers with respect to the Texas Senate?

8 A. Generally, yes.

9 Q. Do you know whether there's any significance  
10 with respect to the lieutenant governor's role when a  
11 bill is referred to the committee of the whole Senate?

12 MR. SWEETEN: Are you asking what is his  
13 public role with respect to the committee because I'll  
14 let her answer as to the public role, but if you are  
15 asking about specifics -- by role, that's a very vague  
16 term.

17 Q. Let me rephrase the question and maybe that  
18 will solve multiple problems. What are the lieutenant  
19 governor's powers and/or duties when a bill is referred  
20 to the committee of the whole Senate?

21 A. Oh, I don't know. Under the Senate rules, I  
22 don't know.

23 Q. It looks like on -- well, on the date column,  
24 it says March 11, 2009, but there's a comment that says  
25 March 16, 2009, but putting aside that wrinkle, it looks

95

1 bill to the committee on elections?

2 A. It's the speaker's decision to refer bills.

3 Q. Did he consult you with respect to which

4 committee to refer SB362 to?

5 MR. SWEETEN: You can answer if you had  
6 any conversations or communications with the him about  
7 that subject matter. Don't reveal the communications  
8 themselves.

9 A. I don't remember.

10 Q. Do you recall having any discussions with any  
11 members of the House about SB362?

12 A. I'm sure we discussed SB362.

13 Q. When you say "we," who are you referring to?

14 A. Members and myself.

15 Q. Do you recall the names of particular members  
16 of the House with whom you discussed SB362?

17 A. No, other than maybe the chairman of elections  
18 maybe, but other than that, I don't.

19 Q. Do you recall the general nature of your  
20 discussion with the chairman regarding SB362?

21 A. No.

22 MR. SWEETEN: Don't reveal the substance  
23 of the communication.

24 A. No.

25 Q. In the legislative history that we're looking

94

1 like some point in mid-2011 -- excuse me, in mid-2009 --  
2 Let me rephrase again.

3 At some point in mid-March of 2009, SB362  
4 was set as a special order; is that right?

5 A. Yes.

6 Q. It looks like on March 17, 2009, there was a  
7 point of order made in the Senate and then overruled.

8 Do you see that?

9 A. Yes.

10 Q. Do you recall anything about -- Do you recall  
11 anything from the public record about this point of  
12 order?

13 A. No.

14 Q. And then on March 18, 2009, it looks like the  
15 bill was reported engrossed from the Senate; is that  
16 right?

17 A. Yes.

18 Q. And that means that the bill passed the Senate  
19 by at least a majority vote; is that right?

20 A. Yes.

21 Q. And it looks like on March 31st, 2009, this  
22 bill was referred to the House committee on elections;  
23 is that right?

24 A. Yes.

25 Q. Were you involved in the decision to refer the

96

1 at, are you able to tell what the ultimate disposition  
2 of SB362 was in the House?

3 MR. SWEETEN: You can answer based on the  
4 document and it's a matter of public record.

5 A. It was put on the calendar.

6 Q. And that was the last action that was taken; is  
7 that right?

8 A. Yes.

9 Q. And it says that it was placed on the major  
10 state calendar on May 23, 2009. Do you see that?

11 A. Yes.

12 Q. What's the major state calendar?

13 A. That's just one of the calendars that the  
14 calendars committee can put bills on that is -- under  
15 the rules, any bill that they consider a major state  
16 bill or major bill, they put on there.

17 Q. Is it correct that SB362 did not pass out of  
18 the House ultimately?

19 A. That's correct.

20 Q. Again, taking a look at the text of SB362 or  
21 the version that's in front of you, do you have any  
22 understanding as to the source of the legislative  
23 language of SB362?

24 A. No.

25 Q. In looking at SB362 on Page 5, Section 63.0101,

<p style="text-align: center;">97</p> <p>1 do you see that that section sets forth documentation</p> <p>2 that is an acceptable form of photo identification under</p> <p>3 the -- under the bill?</p> <p>4 A. Yes.</p> <p>5 Q. And you see in what looks like Subpart 7, but</p> <p>6 got struck out and is now Subpart 6, that the valid</p> <p>7 forms of identification include a valid identification</p> <p>8 card containing the person's photograph and issued by</p> <p>9 either, A, an agency or institution of the Federal</p> <p>10 government or, B, an agency, institution or political</p> <p>11 subdivision of this state. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know whether that -- that Subsection 6</p> <p>14 that we just looked at would include as a valid form of</p> <p>15 identification a student ID card?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you know who the sponsor in the Senate of</p> <p>18 SB362 was?</p> <p>19 A. Senator Fraser.</p> <p>20 Q. If Senator Fraser stated publicly on the floor</p> <p>21 of the Senate that he understood Section 6 of SB362, the</p> <p>22 provision providing that an individual -- that an</p> <p>23 identification card issued by an agency, institution or</p> <p>24 political subdivision of Texas would be an acceptable</p> <p>25 form of ID, if Senator Fraser had stated that he thought</p>	<p style="text-align: center;">99</p> <p>1 A. It's just when people delay, use dilatory</p> <p>2 tactics to stall, like filibustering, things like that.</p> <p>3 Q. What are the common methods used to stall a</p> <p>4 bill through a chub or chub-a-thon?</p> <p>5 MR. SWEETEN: You can discuss matters of</p> <p>6 public record or general parliamentary procedures.</p> <p>7 A. You mean in the House or in the Senate?</p> <p>8 Q. In the House. Excuse me.</p> <p>9 A. Questions -- I think probably asking lots and</p> <p>10 lots and lots of questions, detailed questions,</p> <p>11 irrelevant questions of the author of the bill or of an</p> <p>12 amendment.</p> <p>13 Q. Do you recall whether SB362 was the subject of</p> <p>14 a chub-a-thon in the House?</p> <p>15 MR. SWEETEN: You can refer to matters of</p> <p>16 the public record.</p> <p>17 A. Well, it was not taken up on the calendar, so I</p> <p>18 don't understand your question.</p> <p>19 Q. When you say the bill "was not taken up on the</p> <p>20 calendar," what are you referring to?</p> <p>21 MR. SWEETEN: Again, you can answer as to</p> <p>22 matters of public record.</p> <p>23 A. This says it was set on the calendar, but I</p> <p>24 don't believe we ever reached the bill on the calendar.</p> <p>25 Q. Is there any means through which someone can</p>
<p style="text-align: center;">98</p> <p>1 that section included a student ID would have any reason</p> <p>2 to doubt that statement?</p> <p>3 MR. SWEETEN: Don't answer the question as</p> <p>4 phrased. Calls for matters of legislative privilege.</p> <p>5 His statement is his statement. She's not going to</p> <p>6 interpret his statement.</p> <p>7 Q. Are you aware of Senator Fraser making any such</p> <p>8 statement?</p> <p>9 A. No.</p> <p>10 Q. So as a general matter, do you think that the</p> <p>11 author or the sponsor of a bill is in a good position to</p> <p>12 interpret the language of the bill?</p> <p>13 MR. SWEETEN: Objection. Calls for</p> <p>14 speculation. Objection. Compound. Objection.</p> <p>15 Relevance.</p> <p>16 Q. You may answer, Ms. Davis.</p> <p>17 THE WITNESS: Can you reread the question?</p> <p>18 (Requested portion was read.)</p> <p>19 MR. SWEETEN: Same objection and</p> <p>20 argumentative. Go ahead.</p> <p>21 A. Generally, yes.</p> <p>22 Q. Are you familiar with the term chub or</p> <p>23 chub-a-thon?</p> <p>24 A. Yes.</p> <p>25 Q. What do those terms refer to?</p>	<p style="text-align: center;">100</p> <p>1 use the local and consent calendar bill -- Let me step</p> <p>2 back. Is there such a thing as a local and consent</p> <p>3 calendar?</p> <p>4 A. Yes.</p> <p>5 Q. What is that?</p> <p>6 A. That is a separate calendar for bills that</p> <p>7 are -- local bills that are considered to be consent</p> <p>8 bills or noncontroversial bills, to pass them quickly.</p> <p>9 Q. Do you recall any -- any members using the</p> <p>10 local and consent calendar as a means to stall</p> <p>11 consideration of SB362?</p> <p>12 A. Yes.</p> <p>13 Q. What do you recall about that?</p> <p>14 MR. SWEETEN: You can refer only to</p> <p>15 matters of the public record. Don't reveal matters of</p> <p>16 privilege including privileged conversations, okay?</p> <p>17 A. I just remember being on the local calendar for</p> <p>18 a long time, days and days.</p> <p>19 Q. Who controls how long a bill stays on the local</p> <p>20 calendar?</p> <p>21 MR. SWEETEN: You can answer as a general</p> <p>22 matter of parliamentary procedure.</p> <p>23 A. What do you mean? I don't understand your</p> <p>24 question.</p> <p>25 Q. Well, I believe you previously stated that you</p>

<p style="text-align: center;">101</p> <p>1 are aware of the local and consent calendar being used</p> <p>2 to stall consideration of SB362.</p> <p>3 A. Right. And there were lots of bills on the</p> <p>4 calendar, so the members, the author of the bill and the</p> <p>5 presiding officers in the chair -- the presiding officer</p> <p>6 who's providing over the local and consent calendar</p> <p>7 would control that.</p> <p>8 Q. With respect to SB362 in 2009, do you know who</p> <p>9 had that kind of control?</p> <p>10 A. You mean who's presiding over the local</p> <p>11 calendar?</p> <p>12 Q. Correct.</p> <p>13 A. That would have been Craig Eiland.</p> <p>14 Q. What can be done to overcome a chub-a-thon?</p> <p>15 MR. SWEETEN: You can answer based on</p> <p>16 matters of general parliamentary procedure. Don't</p> <p>17 reveal matters of privilege.</p> <p>18 A. For the local calendar or for anything?</p> <p>19 Q. Let that's start with the local calendar.</p> <p>20 A. You can use, I guess, a variety of maybe</p> <p>21 procedural things to -- to try to overcome, and I would</p> <p>22 have to go back and research it. Probably some vote</p> <p>23 suspensions, maybe -- since it's a special order,</p> <p>24 probably have to do some kind of extraordinary vote</p> <p>25 requirement or something like that.</p>	<p style="text-align: center;">103</p> <p>1 communications that you had with anyone. So in</p> <p>2 answering this question, just be mindful of privilege.</p> <p>3 You can answer as a general matter.</p> <p>4 A. Just a general role, moving things through,</p> <p>5 things like that, like you do with all the bills, just</p> <p>6 making sure you move the process.</p> <p>7 Q. As a general matter, what do you do to make</p> <p>8 sure that you move the process?</p> <p>9 MR. SWEETEN: You're starting to intrude</p> <p>10 by this question into matters that would be subject to</p> <p>11 legislative privilege, motivations, thoughts,</p> <p>12 impressions about bills, discussions that she may have</p> <p>13 had. When you are asking about strategy, you are</p> <p>14 intruding in a legislative privilege. I'm going to</p> <p>15 object. I'm going to instruct her not to answer that</p> <p>16 question as phrased.</p> <p>17 Q. I'll try to rephrase. Putting aside any</p> <p>18 particular piece of legislation, what is the role of the</p> <p>19 chief of staff with respect to moving bills along?</p> <p>20 A. You just listen to the members, listen to the</p> <p>21 parliamentarian, the speaker and facilitate.</p> <p>22 Q. As chief of staff to Speaker Straus, did you</p> <p>23 have many discussions with members of the House</p> <p>24 concerning voter ID laws?</p> <p>25 MR. SWEETEN: You can answer yes or no as</p>
<p style="text-align: center;">102</p> <p>1 Q. You stated that SB362 was the subject of a</p> <p>2 chub-a-thon via the local consent calendar. Do you see</p> <p>3 that reflected somehow in the legislative history that</p> <p>4 we looked at?</p> <p>5 A. Of 362?</p> <p>6 Q. Yes.</p> <p>7 MR. SWEETEN: You are asking her about</p> <p>8 Exhibit 11 -- whether it's in Exhibit 11? Is that the</p> <p>9 question?</p> <p>10 MR. HARRIS: Correct.</p> <p>11 A. I don't see it in the calendar or on the -- on</p> <p>12 this action report. I don't see it there.</p> <p>13 Q. In January of 2010 you became chief of staff to</p> <p>14 Speaker Straus; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. During your time as chief of staff to Speaker</p> <p>17 Straus, did you have any involvement with respect to</p> <p>18 voter ID legislation?</p> <p>19 MR. SWEETEN: You can answer yes or no to</p> <p>20 that question.</p> <p>21 A. Yes.</p> <p>22 Q. What was your role with respect to voter ID</p> <p>23 legislation as chief of staff to Speaker Straus?</p> <p>24 MR. SWEETEN: You can give a general</p> <p>25 answer. Do not reveal privilege including</p>	<p style="text-align: center;">104</p> <p>1 to whether you had communications.</p> <p>2 A. Yes.</p> <p>3 Q. Which members did you discuss voter ID with?</p> <p>4 MR. SWEETEN: You can answer, but don't</p> <p>5 reveal the substance of the communications.</p> <p>6 A. Todd Hunter, Patricia Harless. That would be</p> <p>7 all I would remember off top of my head.</p> <p>8 Q. How frequently did you discuss voter ID with</p> <p>9 Mr. Hunter?</p> <p>10 A. Not -- Not much.</p> <p>11 Q. Can you be more specific?</p> <p>12 A. More specific as in how many times?</p> <p>13 Q. Yes.</p> <p>14 A. Maybe two or three times.</p> <p>15 Q. Do you recall when those discussions took</p> <p>16 place?</p> <p>17 A. No, not -- not the specific dates.</p> <p>18 Q. Are you able to narrow it down to a particular</p> <p>19 year?</p> <p>20 A. Well, in the spring -- spring of last year.</p> <p>21 Q. And how about Representative Harless? How</p> <p>22 often did you speak to her about voter ID laws?</p> <p>23 A. Oh, maybe -- maybe three or four times.</p> <p>24 Meredyth Fowler was the policy person, so she was the</p> <p>25 lead policy person on it, so maybe three or four times.</p>

105

1 Q. And you said that Meredyth Fowler was the lead  
2 policy person for Speaker Straus on the issue of voter  
3 ID; is that right?

4 A. Right.

5 Q. Who else from the speaker's office worked on  
6 the issue of voter ID?

7 A. Directly, pretty much Meredyth. I mean, she  
8 was the point person on it.

9 Q. Would Ms. Fowler consult with you regarding  
10 voter ID?

11 A. You mean, the substance of it or what was going  
12 on with it, things like that?

13 Q. Well, let's just start as a general matter, did  
14 she talk to you about it at all?

15 A. Yes.

16 Q. Did she ever talk to you about the substance of  
17 it?

18 A. Yes.

19 MR. HARRIS: Let's take a short break, if  
20 that's okay.

21 THE WITNESS: Okay.

22 (Recess from 1:28 p.m. to 1:40 p.m.)

23 Q. (BY MR. HARRIS) Are you familiar with the  
24 process through which the governor of Texas may declare  
25 a particular type of legislation to be an emergency

107

1 parliamentary procedure as to matters of the public  
2 record.

3 A. Well, the governor issues a proclamation  
4 designating something an emergency. The House and the  
5 Senate receive it and decide whether or not they want to  
6 act on it and how they want to take it up.

7 Q. Does it make any difference whether the  
8 governor declares something to be an emergency item or  
9 not in terms of how and when it gets considered by the  
10 legislature?

11 MR. SWEETEN: You can answer as matters of  
12 public record.

13 A. There's precedent in the rules that says  
14 it's -- the House gets to decide how they want to handle  
15 emergency matters.

16 Q. There's an emergency calendar in the House; is  
17 that right?

18 A. Yes.

19 Q. And the rules provide that -- that certain  
20 issues -- bills concerning certain issues may be  
21 assigned to the emergency calendar. Is that your  
22 understanding?

23 A. Yes.

24 Q. And the rules also state that a bill deemed to  
25 be an emergency by the governor may be placed on the

106

1 item?

2 A. Yes.

3 Q. Can you tell me how that process works?

4 MR. SWEETEN: You can answer as a general  
5 matter to your understanding. Don't -- And objection to  
6 the extent it calls for speculation. Go ahead.

7 A. The legislature gets a proclamation from the  
8 governor designating an item an emergency.

9 Q. Within a particular session, how many items  
10 does the governor typically declare to be an emergency?

11 A. I mean, it's up to the governor to decide what  
12 he wants, as many as or few as he wants.

13 Q. In your experience from your years in the Texas  
14 House, how many items in a -- would be designated  
15 emergency items in a particular session?

16 A. Oh, you know, I can't say. Off the top of my  
17 head, it's -- you know.

18 Q. Would it be like less than 10 in a year?

19 A. In a session?

20 Q. In a session.

21 A. Without specials or regular? Possibly, yeah.  
22 It's just up to the governor.

23 Q. What is the effect of the governor issuing a  
24 proclamation that an item is an emergency item?

25 MR. SWEETEN: You can answer as a general

108

1 emergency calendar; is that right?

2 A. Yes, it may be.

3 Q. And what is the emergency calendar?

4 A. I mean, it's one of the calendars that the  
5 calendars committee can assign bills to that it has  
6 determined are important bills that are emergency in  
7 nature.

8 Q. Given that the emergency calendar is for  
9 important bills that are of an emergency in nature, is  
10 it the case that bills assigned to the emergency  
11 calendar can be considered sooner than other bills?

12 MR. SWEETEN: Objection. Assumes facts  
13 not in evidence. Also, you can answer as a matter of  
14 general parliamentary procedures or matters of the  
15 public record. Don't reveal matters of privilege.

16 A. What do you mean by sooner?

17 Q. Why have an emergency calendar?

18 MR. SWEETEN: You can answer as a matter  
19 of general parliamentary procedure.

20 A. Well, the rules put the emergency calendar in  
21 the system of calendars as the first calendar. So if  
22 the bill is assigned to an emergency calendar, then it  
23 is taken up ahead of the other bills.

24 Q. As a general matter, if a bill concerning voter  
25 identification requirements were not designated by the



109

1 governor as an emergency item, could that bill be  
2 assigned to the emergency calendar?

3 MR. SWEETEN: You can answer as to general  
4 parliamentary matters, matters of public record. Don't  
5 reveal privileged information.

6 Q. It could be so assigned?

7 A. Yes.

8 Q. And I think you said that the emergency  
9 calendar set forth the types of bills that could be --  
10 that could be assigned to that calendar; is that right?

11 A. Yes.

12 Q. Which category of bills would a voter ID  
13 legislation not designated as an emergency by the  
14 governor fall within?

15 A. Rule 7 says --

16 MR. SWEETEN: Same instruction. Go ahead.

17 A. -- "Emergency calendar on which shall appear  
18 bills considered to be of such pressing and imperative  
19 import as to demand immediate action."

20 Q. And so it could fall into that category?

21 A. If the calendars committee believes that that  
22 rule applies, yes.

23 Q. As a general matter, why would the governor  
24 deem something to be an emergency?

25 MR. SWEETEN: Objection. That calls for

110

1 matters of legislative privilege and calls for  
2 speculation. Don't answer the question as posed.

3 Q. Putting aside any particular legislation and  
4 given that the governor is not a legislator, as a  
5 general matter, why would the governor deem something to  
6 be an emergency?

7 MR. SWEETEN: Objection. Calls for  
8 speculation. Objection. Could require her to reveal  
9 her thoughts and mental processes about legislation  
10 which she does not have to do or communications with  
11 state agencies or other protected members. Don't answer  
12 to the extent you would do that.

13 Q. Are you able to answer the question in spite of  
14 counsel's objection?

15 A. I don't know the answer. I don't know why the  
16 governor decides something is an emergency or not. I  
17 don't know the answer. That is something that he does  
18 with his staff in his office.

19 Q. Does the governor's office ever consult with  
20 the speaker or his staff with respect to which items to  
21 designate as an emergency?

22 MR. SWEETEN: You can answer as to whether  
23 or not there are communications covering that general  
24 issue.

25 A. Do they ever consult?

111

1 Q. Yes.

2 A. Yes.

3 Q. Did the governor's office consult with the  
4 speaker or the speaker's office concerning whether or  
5 not to designate voter ID as an emergency item?

6 MR. SWEETEN: I will let her answer as to  
7 the general subject matter of -- of the issue of  
8 emergency legislation. You've put too much substance in  
9 that question for me to let her answer as phrased, so if  
10 you want to ask a more general subject matter question,  
11 I'll let her answer.

12 MR. HARRIS: I think that the general  
13 matter was covered by the last question. I would argue  
14 that nothing more than my question would have to go on a  
15 privilege log, but not interested in fighting that out  
16 here in the room.

17 MR. SWEETEN: If you want to ask her if  
18 there were communications between Speaker Straus's  
19 office and the governor's office about whether this was  
20 an emergency, I will let her answer that question, but  
21 not anymore substance than that.

22 Q. Were there any discussions between the governor  
23 or his staff and the speaker or his staff concerning  
24 whether to designate voter ID as an emergency?

25 MR. SWEETEN: It's the same question that

112

1 you asked. I'm going to let you answer yes or no.

2 A. I actually don't remember if we talked about it  
3 with them or not.

4 Q. Do you recall whether there were any  
5 communications between the governor's office and the  
6 speaker's office concerning the declaration of emergency  
7 items in 2011?

8 A. Yes.

9 Q. And are you saying there were some  
10 communications?

11 A. Yes. A variety, but I don't know if this was  
12 one or not because there were -- you know, there were  
13 several.

14 Q. Do you know why the governor designated voter  
15 ID as an emergency item?

16 A. No.

17 Q. Do you recall what other items were designated  
18 as an emergency during the regular 2011 session?

19 A. I think Sanctuary Cities, sonogram bill, voter  
20 ID, the Texas windstorm -- TWIA, Texas Windstorm  
21 Insurance Association, and those are the ones I remember  
22 off the top of my head. The pat-down bill -- the  
23 homeless -- The pat-down bill.

24 Q. Are you familiar with Senate Bill 14 from the  
25 2011 82nd legislative session?

<p style="text-align: center;">113</p> <p>1 A. Not by number. I don't -- Not by that number. 2 (League Exhibit 12 marked.)</p> <p>3 Q. I would ask that this document be marked for 4 identification League Exhibit 12. And, Mrs. Davis, 5 please take a few moments to look over the document.</p> <p>6 A. Okay.</p> <p>7 Q. Does this refresh your recollection as to the 8 subject matter of Senate Bill 14 from the 82nd session?</p> <p>9 A. Yes.</p> <p>10 Q. And this bill, like the previous bills we 11 looked at, concerns identification requirements for 12 voters in Texas.</p> <p>13 A. Yes.</p> <p>14 Q. Is that right? Did you have any discussions 15 about SB14? I think I asked you previously about 16 general discussions you had with members. I believe you 17 said that you had discussions with Representative Hunter 18 and Representative Harless.</p> <p>19 A. Yes.</p> <p>20 Q. Did those discussions concern SB14?</p> <p>21 A. With -- With Representative Harless, we 22 probably discussed 14.</p> <p>23 Q. And what about Representative Hunter?</p> <p>24 A. I think those were mostly general discussions.</p> <p>25 Q. Other than those two representatives, did you</p>	<p style="text-align: center;">115</p> <p>1 election identification certificate or personal 2 identification card issued by the Department of Public 3 Safety that hasn't expired, a US military ID card with 4 the person's photograph, a US citizenship certificate 5 with the person's photograph, a passport, a license to 6 carry a concealed handgun -- or a license to carry a 7 concealed handgun.</p> <p>8 Q. And limiting your answer solely to the text of 9 the bills that we've looked at here today, how would you 10 compare Section 63.0101 in SB14 to the prior versions of 11 the voter ID bills that we looked at?</p> <p>12 MR. SWEETEN: She's not going to reveal 13 her mental thoughts and impressions about why 14 is 14 different than something else. If you want her to go 15 through the exercise of comparing the language of Senate 16 Bill 14 and the language of 362, as marginally relevant 17 as that would be, I will let her compare the actual text 18 in front of her. She will not reveal her mental 19 impression and thoughts about why these are different or 20 how they're different.</p> <p>21 Q. Well, limited yourself to a comparison of SB362 22 and SB14, please tell me how the bills differ in terms 23 of the identification permissible. And I will refer you 24 to Page 5 of SB362.</p> <p>25 A. Okay. Well, all I can do is read what's in</p>
<p style="text-align: center;">114</p> <p>1 speak to any other members of the House about SB14?</p> <p>2 A. I don't -- I don't -- Not to my memory, no.</p> <p>3 Q. Did you have any discussions with constituents 4 regarding SB14?</p> <p>5 A. No.</p> <p>6 Q. If you can take a look at Page 9 of the bill in 7 Section 63.0101.</p> <p>8 A. Okay.</p> <p>9 Q. Ms. Davis, do you agree that that appears to be 10 a list of documentation that is an acceptable photo 11 identification under the bill?</p> <p>12 A. Yes.</p> <p>13 Q. And how would you compare this list in 63.0101 14 to the list of identification permitted under previous 15 bills that we've looked at today?</p> <p>16 MR. SWEETEN: Do not answer. It would 17 require you to reveal your thoughts, mental impressions 18 about legislation instruction. Instruct you not to 19 answer based on legislative privilege.</p> <p>20 Q. What are the forms of identification that are 21 permitted under this bill, SB14?</p> <p>22 MR. SWEETEN: You can answer based on the 23 text of the bill.</p> <p>24 A. It says an acceptable form of photo 25 identification under this chapter, a driver's license,</p>	<p style="text-align: center;">116</p> <p>1 each one of them, but 5 -- I mean in SB362, you have a 2 photo ID, which would be a driver's license or photo ID 3 that hadn't expired or a military ID or a citizenship 4 certificate with the photograph, a passport, a concealed 5 handgun license or a valid ID card issued by a -- by the 6 Federal government or an agency, institution of the 7 Federal government or a political subdivision.</p> <p>8 Q. Do you agree that SB362 would also permit a 9 valid identification card issued by an agency, 10 institution or political subdivision of the State of 11 Texas?</p> <p>12 A. Yes.</p> <p>13 Q. And do you agree that SB14 in contrast does not 14 permit one to vote with a valid identification card 15 issued by an agency, institution or political 16 subdivision of the state?</p> <p>17 MR. SWEETEN: You can answer based on the 18 text of the bills he's got in front of you.</p> <p>19 A. No, I don't see that in the -- in Senate Bill 20 14.</p> <p>21 Q. And do you recall anything about the public 22 legislative history of SB14?</p> <p>23 A. So, no, not -- not off the top of my head I 24 don't, no. 25 (League Exhibit 13 marked.)</p>

117

1 Q. I'd ask that this document be marked as League  
2 Exhibit 13. Mr. Davis, please take a few moments or as  
3 much time as you need to familiarize yourself with the  
4 documents.

5 A. Okay.

6 Q. Do you agree this appears to be a legislative  
7 history of SB14 from the 82nd regular legislative  
8 session?

9 A. Yes.

10 Q. And it looks like this history is in reverse  
11 order of the ones we've been looking at previously, but  
12 turning to the -- to the last page of the exhibit, looks  
13 like SB14 was filed on January 12, 2011; is that right?

14 A. Yes.

15 Q. And it looks like on January 24th, 2011 the  
16 bill was referred to the committee of the whole Senate.  
17 Do you see that?

18 A. Yes.

19 Q. Do you know who makes appointments to  
20 particular committees on the Senate side?

21 A. The lieutenant governor.

22 Q. Do you know why the lieutenant governor  
23 referred SB14 to the committee of the whole Senate?

24 MR. SWEETEN: Objection. Legislative  
25 privilege. Objection. Calls for speculation. It would

119

1 set SB14 as a special order?

2 A. The -- A majority of the members of the Senate.

3 Q. Skipping ahead to January 26, 2011, this is on  
4 Page 6 of 10 of the exhibit.

5 A. Okay.

6 Q. Do you see that on January 26th, 2011, SB14 was  
7 reported engrossed from the Senate?

8 A. Yes.

9 Q. And that means that the bill passed the Senate;  
10 is that right?

11 A. Yes.

12 Q. And at that time the bill went to the House; is  
13 that right?

14 A. Yes.

15 Q. Now, I see here that the bill was referred to  
16 the voter identification and voter fraud, select. Do  
17 you understand that to mean a select committee?

18 A. Yes.

19 Q. What is a select committee?

20 MR. SWEETEN: You can answer as a general  
21 matter.

22 A. Under the rules it's just a -- a committee  
23 that -- that can be created in the House under the  
24 rules, separate from a standing committee.

25 Q. In general, what is the purpose of having a

118

1 require her to reveal her mental thoughts, processes  
2 about why the lieutenant governor would have referred  
3 something to the committee of the whole which invades  
4 the legislative privilege or it also could require her  
5 to reveal communications that she's had with the various  
6 entities protected under the privilege. Therefore, my  
7 question is to not answer the question.

8 MR. HARRIS: As before, I'm just asking if  
9 she knows why which requires a yes or no. Will you  
10 permit her to answer yes or no?

11 MR. SWEETEN: You can answer that question  
12 yes or no.

13 A. No.

14 Q. And then it looks like on January 25, 2011,  
15 SB14 was set as a special order; is that right?

16 A. Where?

17 Q. On January 25th, 2011, you see there's a few  
18 actions taken that day, but I see --

19 A. Yes.

20 Q. -- one entry that says "set as special order,"  
21 right?

22 A. Yes.

23 Q. Based on our previous review of -- of the  
24 Senate rules with respect to special orders in voter ID,  
25 do you know how many votes would have been required to

120

1 select committee?

2 MR. SWEETEN: Don't reveal matters of  
3 legislative privilege. If in doing so, it would, do not  
4 answer the question.

5 A. You can have a lot of reasons for it. It  
6 depends on the issue, the legislature, the members'  
7 interests, whatever. A variety of reasons.

8 Q. What's the difference between a select and a  
9 standing committee?

10 A. A standing committee is considered to be a -- a  
11 permanent -- permanently in the rules from session to  
12 session, and a select committee usually lasts for that  
13 particular legislature.

14 Q. When was the voter identification and voter  
15 fraud select committee established?

16 A. Last -- Last session during the committee  
17 appointments.

18 Q. Were any bills other than SB14 referred to the  
19 voter identification and voter fraud select committee?

20 A. I believe, yes. I believe there were some that  
21 were -- that were sent there initially, yes.

22 Q. And which bills are you referring to?

23 A. I don't know off the top of my head. I believe  
24 some were sent there and then re-referred to elections  
25 or whatever.

121

1 Q. Why was SB14 bill -- let me -- Let's step back  
2 for a second. Do you know why SB14 was referred to the  
3 voter identification and voter fraud select committee?

4 A. No.

5 Q. What is the process of creating a select  
6 committee?

7 MR. SWEETEN: Don't reveal matters of  
8 privilege as to a specific piece of legislation. If  
9 doing so you would, then do not answer the question.

10 A. It's just a proclamation that's issued by the  
11 speaker.

12 Q. During your time in the House, how many select  
13 committees would typically be created in any given  
14 session?

15 MR. SWEETEN: You can answer as a matter  
16 of public record.

17 A. Well, they're created from one legislature to  
18 the next, so sometimes 9, 10, 11. I mean, just depends.

19 Q. Are the select committees dissolved or  
20 terminated in some official way?

21 A. They last from one legislature to the next.

22 Q. Do you know whether there was any -- there had  
23 been a previous select committee on voter identification  
24 and voter fraud?

25 A. I don't know.

122

1 Q. Does the speaker appoint members to select  
2 committees?

3 A. Yes.

4 Q. As a general matter when you were chief of  
5 staff to the House -- excuse me -- to Speaker Straus,  
6 did he consult with you regarding whether or not to  
7 create a select committee?

8 MR. SWEETEN: You can answer as to whether  
9 he consulted with you.

10 A. Yes.

11 Q. And would the speaker consult with you  
12 regarding members as a general matter to appoint to a  
13 select committee?

14 A. Yes.

15 Q. What sort of factors would you take into  
16 account as a general matter with respect to whether or  
17 not to create a select committee as opposed to just  
18 assigning a bill to one of the standing committees?

19 MR. SWEETEN: Don't answer that. That  
20 would reveal matters of privilege. Instruct not to  
21 answer.

22 MR. HARRIS: And just for the record,  
23 that -- the privilege you are asserting is a legislative  
24 privilege?

25 MR. SWEETEN: Absolutely. With respect to

123

1 the speaker who she's testified designates the select  
2 committees. It would reveal thought processes. That's  
3 legislatively privileged. Don't answer.

4 Q. As parliamentarian, would the speaker ever  
5 consult with you regarding whether or not to create a  
6 select committee?

7 A. Yes.

8 Q. What results would govern the decision whether  
9 or not to create a select committee?

10 MR. SWEETEN: Same objection. Don't  
11 reveal the thought processes that the speaker may have  
12 had or your own internal thought processes as to why a  
13 select committee would be impacted in answering the  
14 question. Legislative privilege.

15 A. Well, there are some rules in there -- in the  
16 House rules for the select committees, and I don't know  
17 what they are specifically, but there are rules in the  
18 rules -- in the House rules for it.

19 Q. Skipping ahead in this legislative history that  
20 we've been looking at, it looks like SB14 passed the  
21 House on March 24th, 2011; is that right?

22 A. Yes.

23 Q. It says that on April 5th, 2011, a House  
24 amendment was laid before the Senate. What do you  
25 understand that entry to mean?

124

1 A. That is the House version of the Senate bill  
2 that is Senate bill with House amendment attached to it.

3 Q. It says that on that same day, April 5th, 2011,  
4 the Senate refuse tod the concur. Does that mean that  
5 the Senate refused to adopt the version of the bill as  
6 amended by the House?

7 A. Yes.

8 MR. SWEETEN: You can answer based on  
9 public record, which I think you are.

10 A. Yes.

11 Q. Then it looks like the Senate requested a  
12 conference committee on April 6, 2011. Do you see that?

13 A. Yes.

14 Q. What is a conference committee?

15 A. It's just a committee between of the House and  
16 the Senate that convenes to reconcile the differences  
17 between the House and Senate versions of the bill.

18 Q. Who appoints members to the -- to a conference  
19 committee as a general matter?

20 A. The lieutenant governor and the speaker.

21 Q. Did the speaker consult with you regarding  
22 appointment of members to the conference committee for  
23 SB14?

24 MR. SWEETEN: You can answer.

25 A. Yes.

125

1 Q. How many members of the House and Senate sit on  
2 a conference committee?

3 A. Five members of the House and five members of  
4 the Senate sit on a conference committee as a general  
5 matter.

6 Q. As a general matter, how are members chosen to  
7 sit on the conference committee?

8 MR. SWEETEN: Don't reveal any thought  
9 processes of the speaker or yourself as to any  
10 particular bill with respect to this. You can answer as  
11 to matters of the public record, but don't reveal your  
12 decisional process as a matter of legislative privilege.

13 A. Usually the author and the sponsor of the bill  
14 are put on there and beyond that it's a number of  
15 factors.

16 Q. What are those factors you are referring to?

17 A. It could be --

18 MR. SWEETEN: Same objection.

19 A. -- any of them.

20 Q. Well, when you say anything, there must be some  
21 factors that are more typically considered, right?

22 MR. SWEETEN: Same instruction, but don't  
23 reveal your thought processes regarding any specific  
24 piece of legislation. If in answering the question you  
25 do so, do not answer it.

126

1 A. Interest, expertise, seniority, experience, a  
2 number of things.

3 Q. Is there a required balance between Democrats  
4 and Republicans that need to be appointed to a  
5 conference committee?

6 A. No.

7 MR. SWEETEN: Same instruction.

8 Q. How would the speaker and lieutenant governor  
9 typically decide how many Republicans and how many  
10 Democrats to appoint to a conference committee without  
11 regard to any particular piece of legislation?

12 MR. SWEETEN: You can answer if it will  
13 not reveal motivations regarding any particular piece of  
14 legislation. If it will, do not answer the question.

15 A. I can't answer it.

16 Q. And as a matter of the public record, is there  
17 a -- typically certain members of Democrats and  
18 Republicans appointed to a conference committee?

19 A. Yes.

20 Q. It looks like from this legislative history  
21 that on May 5th, 2011, a conference committee report was  
22 distributed. And I'm looking at the first page.

23 A. Yes.

24 Q. And then the last entry says that the Senate  
25 adopted a resolution to go outside bounds on May 9,

127

1 2011. Do you see that?

2 A. Yes.

3 Q. What does a resolution to go outside bounds  
4 mean?

5 MR. SWEETEN: You can answer as a general  
6 matter.

7 A. That is a resolution that gives the conference  
8 committee permission to submit a bill that did more than  
9 the original bill.

10 Q. And when you say "that did more than the  
11 original bill," what do you mean by that?

12 A. That exceeded the jurisdiction of the original  
13 bill, added new language that wasn't in either bill and  
14 things like that.

15 Q. As a matter of public record do you know what  
16 this entry is referring to with respect to SB14?

17 A. No, I don't.

18 Q. And it looks like on May 9, 2011, the Senate  
19 adopted the conference committee report; is that right?

20 A. Yes.

21 Q. And then on May 16th, the House adopted the  
22 conference committee report?

23 A. Yes.

24 Q. Is that right? And it looks like the bill was  
25 signed in the House, the Senate and sent to the governor

128

1 on May 18th, 2011; is that right?

2 A. Yes.

3 Q. With respect to any of the four voter ID bills  
4 that we've looked at today, are you aware of any  
5 analysis with regard to the number of voters in Texas  
6 who lack the required forms of photo ID?

7 A. No.

8 Q. Are you aware of with -- Respect to any of  
9 those same four bills, are you aware of any analysis  
10 with respect to the proportion of racial or ethnic  
11 minority groups that possess the required forms of photo  
12 ID?

13 A. No.

14 Q. Are you aware of -- with respect to any of  
15 these four bills, are you aware of any concerns  
16 raised -- publicly raised by members of the House with  
17 regard to the impact of the bill on racial or ethnic  
18 minority groups?

19 MR. SWEETEN: He's asking about public  
20 statements made about this issue. You can answer to  
21 that extent.

22 A. Yes.

23 Q. And what is your recollection of those  
24 concerns?

25 A. I just remember generally members in the

129

1 democratic caucus just raising those concerns generally.  
 2 Q. Do you remember that for all four of the bills  
 3 or are you thinking about a particular -- particular  
 4 bill or session?  
 5 A. I was thinking about last session, the 2011  
 6 session.  
 7 Q. Are you aware of any similar concerns with  
 8 regard to the impact of the bill being raised by  
 9 interest groups or advocacy groups in Texas?  
 10 A. No.  
 11 Q. How about constituents? Did you ever hear  
 12 constituents express concern that SB14 or any of the  
 13 three other bills we looked at would have a  
 14 disproportionate impact on them as minority voters?  
 15 A. No.  
 16 Q. Are you familiar with the Voting Rights Act?  
 17 A. Yes.  
 18 Q. Are you familiar with Section 5, preclearance  
 19 requirement under the Voting Rights Act?  
 20 A. Yes. Generally.  
 21 Q. What is your general understanding of the  
 22 requirements of Section 5 of the Voting Rights Act?  
 23 A. There are certain things that have to be  
 24 precleared by the justice department if they impact the  
 25 rights of minorities or protected groups to exercise the

130

1 right to vote, something along those lines.  
 2 Q. From your time in the House would you say that  
 3 the legislature takes any steps to ensure that the bills  
 4 they pass are in compliance with the Voting Rights Act?  
 5 MR. SWEETEN: Objection. Legislative  
 6 privilege. Don't answer the question.  
 7 Q. Putting aside any particular piece of  
 8 legislation, are you aware of any steps taken by the  
 9 legislature to ensure compliance with the Voting Rights  
 10 Act?  
 11 MR. SWEETEN: Objection. To the extent it  
 12 would call for her to reveal thoughts, mental  
 13 impressions about a particular bill, do not answer that.  
 14 You can refer to matters of the public record.  
 15 A. I know that they have attorneys that probably  
 16 look at, the ledge council.  
 17 Q. When members of the democratic caucus raised  
 18 concerns about impact of SB14 on minority voters, what  
 19 was your opinion of those assessments by the democratic  
 20 members?  
 21 MR. SWEETEN: Do not answer. Legislative  
 22 privilege. Instruct not to answer.  
 23 Q. Do you have any understanding as to whether  
 24 Democrats or Republicans would be more or less likely to  
 25 possess the required forms of identification under SB14?

131

1 MR. SWEETEN: In answering the question,  
 2 don't reveal your thoughts, mental processes about the  
 3 legislation, and he's asking you for an analysis of  
 4 that. In fact, I'm going to instruct you not to answer  
 5 the question. It's legislatively privileged.  
 6 MR. HARRIS: Let's take a very short break  
 7 after which I expect to be able to conclude my  
 8 questioning quickly.  
 9 (Recess from 2:19 p.m. to 2:28 p.m.)  
 10 Q. (BY MR. HARRIS) Ms. Davis, are you ready to go  
 11 back on the record?  
 12 A. Yes.  
 13 Q. I appreciate your time, and I have just a few  
 14 further questions. First is, we were talking before  
 15 about -- Well, subject to many objections, my question  
 16 was whether there were differences in number of the  
 17 Republicans and Democrats who would possess the required  
 18 form of photo ID. And my question is are you aware of  
 19 any evidence in the public to the effect that either  
 20 Republicans or Democrats would be more or less likely to  
 21 possess the kinds of ID required under SB14?  
 22 A. I'm not.  
 23 Q. Are you aware of any -- Putting aside the  
 24 specific substance of any discussions with legislators,  
 25 are you aware of any discussions amongst legislators

132

1 concerning the proportion of Republicans and Democrats  
 2 that would request the required forms of voter ID?  
 3 A. You'll have to ask it again.  
 4 MR. HARRIS: I'd ask that the court  
 5 reporter read back the question, please.  
 6 (Requested portion was read.)  
 7 A. No.  
 8 MR. HARRIS: I have nothing further at  
 9 this time, but reserve the right to reopen the  
 10 deposition subject to potential motions with respect to  
 11 privilege, and, otherwise, I would turn it over to the  
 12 United States to the extent it has questions.  
 13 EXAMINATION  
 14 BY MS. BERKOWER  
 15 Q. Good afternoon, Ms. Davis. My name is Risa  
 16 Berkower, and I'm here on behalf of the Attorney  
 17 General, Eric Holder. I'll do my best not to cover any  
 18 ground that Mr. Harris has already covered with you  
 19 today.  
 20 A. Okay.  
 21 Q. I think to be clear though, when I use the term  
 22 voter ID or photo ID, I'm going to use those terms  
 23 interchangeably, and I want you to interpret them  
 24 broadly to mean a requirement that a voter present a  
 25 form of identification, whether it has a photo or



133

1 otherwise when voting in person before being permitted  
2 to vote by regular ballot. Does that make sense?

3 A. Yes.

4 Q. When I refer to the term minority voters, I  
5 mean voters that are non-white or non-Anglo. Does that  
6 make sense?

7 A. Yes.

8 Q. If you have any questions about what I'm trying  
9 to ask, just let me know and I'll try and rephrase.

10 A. Okay.

11 Q. So with regard to your duties when you were a  
12 parliamentarian, focusing on those right now, you said  
13 that you would provide advice to the speaker. Was  
14 that -- Just to be clear, was that limited only to  
15 procedural topics or was the advice ever substantive?

16 A. Procedural.

17 Q. Is the speaker bound to take your advice?

18 A. No.

19 Q. Why -- why -- Why not?

20 A. Well, traditionally, the parliamentarian is an  
21 advisor to the speaker or to the presiding officer.

22 Q. Does the speaker usually take the advice of a  
23 parliamentarian just generally in terms of your service?

24 A. Generally, yes.

25 Q. What is a parliamentary inquiry exactly?

134

1 A. That is a question that a member asks of the  
2 chair related to procedural issues before the House.

3 Q. And what does the parliamentarian do when a  
4 parliamentary inquiry is made?

5 A. The parliamentarian assists the speaker in  
6 answering the question.

7 Q. Is that something that occurs on the record or  
8 off the record?

9 A. Both.

10 Q. How does -- How is it determined when it's on  
11 the record or off the record?

12 A. It's up to the member.

13 Q. In your memory has there been any instance in  
14 which the speaker has not taken your advice on the  
15 public record?

16 A. You mean, where I've given the speaker  
17 confidential advice?

18 Q. Well, I guess you said sometimes your advice is  
19 made on the record; is that accurate?

20 A. Well, yes. I mean, the question is asked and  
21 then you advise the speaker between the two of you, but  
22 the parliamentarian never speaks on the record.

23 Q. Oh, I see. And how does a bill get brought up  
24 for a vote exactly? What are the procedures there?

25 MR. SWEETEN: In the House?

135

1 MS. BERKOWER: Yes.

2 MR. SWEETEN: You can testify as to  
3 matters of public record.

4 A. A bill is placed on the calendar by the  
5 calendar's committee and for consideration. That  
6 calendar lays out or is before the House 24 to 36 hours  
7 before it's taken up and then the -- then the speaker  
8 lays the bill out in the regular order of business.

9 Q. Is every bill put -- brought up for a vote that  
10 makes that committee placed on a calendar?

11 A. Ask me that again.

12 Q. Is every bill that's placed on the calendar  
13 brought up for a vote?

14 A. No.

15 Q. When would a bill not be brought up for vote?

16 MR. SWEETEN: You can answer as a matter  
17 of public record.

18 A. May not be reached in time, could be postponed  
19 a member may decide they don't want the bill to be  
20 brought up for a vote or just a variety of reasons.

21 Q. Does the parliamentarian have a role in the  
22 decision of whether a bill is brought up for a vote?

23 A. No.

24 Q. Is House leadership ever involved in the  
25 decision if a bill will be brought up for a vote?

136

1 A. You mean once it's on the calendar?

2 Q. Yes.

3 A. No.

4 Q. When would House leadership be involved then?

5 MR. SWEETEN: You can answer regarding  
6 matters of the public record. Don't reveal privilege.

7 A. Well, the bill belongs to the individual  
8 member, so it's usually up to the member as to whether  
9 or not they want their bill brought up for a vote.

10 Q. With regard to the voter ID legislation that  
11 came up before the House during the time you were a  
12 parliamentarian, 2005, 2007, 2009, is your  
13 responsibility solely procedural?

14 A. Yes.

15 Q. Did you ever issue ruling papers during your  
16 time as a parliamentarian?

17 A. Yes.

18 Q. Are those public?

19 A. Yes. They're in the journal. If the member  
20 requests a written ruling, it was placed -- requested a  
21 written ruling, it was placed in the journal.

22 Q. Did you make any these publicly issued rulings  
23 during the time that voter ID -- or about any of the  
24 voter ID legislation?

25 A. I don't remember.

<p style="text-align: center;">137</p> <p>1 Q. Does the parliamentarian ever assist with the</p> <p>2 development of legislation?</p> <p>3 A. Well, do you mean like the substantive drafting</p> <p>4 of it, things like that?</p> <p>5 Q. Sure, or anything else really.</p> <p>6 A. Rarely. They usually just review it once it's</p> <p>7 been written. They may -- They may review an amendment</p> <p>8 with a member to assist the member, but they usually</p> <p>9 don't draft legislation. That would be very unusual.</p> <p>10 Q. Do you remember ever drafting legislation?</p> <p>11 A. Not legislation, no.</p> <p>12 Q. What about amendments?</p> <p>13 A. Usually, no, I never draft it. I would review</p> <p>14 it and legislative council's on the floor to do that.</p> <p>15 Q. Is the assistance that you provide with the</p> <p>16 development of legislation as parliamentarian more</p> <p>17 procedurally oriented or would you provide substantive</p> <p>18 advice as well?</p> <p>19 A. No, it's procedural.</p> <p>20 Q. In your view as parliamentarian, are there any</p> <p>21 areas of procedure that impact substance of bills?</p> <p>22 MR. SWEETEN: You can answer as a general</p> <p>23 matter. Don't reveal privilege.</p> <p>24 A. It's usually issues of germaneness, different</p> <p>25 things like that and that is a procedural issue.</p>	<p style="text-align: center;">139</p> <p>1 members ever ask questions when they're developing</p> <p>2 legislation about certain procedural points that they</p> <p>3 need to address with their legislation?</p> <p>4 A. Yes.</p> <p>5 Q. What types of questions did they ask? What</p> <p>6 areas did they get into?</p> <p>7 MR. SWEETEN: In answering the question,</p> <p>8 don't reveal matters of privilege or anything with</p> <p>9 respect to a specific bill. If you cannot answer that</p> <p>10 question, then do not do so.</p> <p>11 A. Just one-subject issues, things like that.</p> <p>12 Does it comply with the one-subject rule, things like</p> <p>13 that .</p> <p>14 Q. What's the one-subject rule?</p> <p>15 A. The bill -- Under the constitution, a bill can</p> <p>16 only have one subject.</p> <p>17 Q. And is that how germaneness factors in?</p> <p>18 A. Or germaneness would be another procedural</p> <p>19 rule.</p> <p>20 Q. Just to be clear though, how is germaneness</p> <p>21 different from one subject?</p> <p>22 A. Well, there's constitutional germaneness and</p> <p>23 there is the -- the one-subject rule. It gets really</p> <p>24 confusing, but there's a germaneness rule in the rules</p> <p>25 and then there's one-subject rule.</p>
<p style="text-align: center;">138</p> <p>1 Q. But it impacts the substance because it's a</p> <p>2 question of what substance is germane to the bill topic.</p> <p>3 Is that what you mean?</p> <p>4 MR. SWEETEN: Objection. Vague.</p> <p>5 Objection. Calls for speculation.</p> <p>6 A. It's hard to know. I mean, some members may</p> <p>7 think it's substantive and some might not, so it's hard</p> <p>8 to know, but the parliamentarian is limited to</p> <p>9 interpreting whether or not the bills actually comply</p> <p>10 with the rules.</p> <p>11 Q. And one of the rules is germaneness.</p> <p>12 A. Is germaneness.</p> <p>13 Q. Now, you said you were also special counsel to</p> <p>14 the House. Is there any distinction between that</p> <p>15 position and the parliamentarian position?</p> <p>16 A. The special counsel deals with just a variety</p> <p>17 of things, sometimes open records, different things like</p> <p>18 that and legal issues.</p> <p>19 Q. As special counsel did you have any role with</p> <p>20 regard to development of legislation?</p> <p>21 A. No.</p> <p>22 Q. Legislative drafting, in that capacity?</p> <p>23 A. No.</p> <p>24 Q. And I guess I meant to ask this when we were</p> <p>25 speaking about your role as parliamentarian. Will</p>	<p style="text-align: center;">140</p> <p>1 Q. Okay. How would you generally distinguish</p> <p>2 between those when you were working on bills?</p> <p>3 A. Well, you're talking about --</p> <p>4 MR. SWEETEN: Hold on. When she's working</p> <p>5 on bills, how would she distinguish it? Just don't</p> <p>6 reveal matters regarding specific legislation in</p> <p>7 answering this question. You can reveal matters of</p> <p>8 general procedure if you can do so without revealing</p> <p>9 matters of privilege, okay?</p> <p>10 A. When you are talking about germaneness issues,</p> <p>11 you typically are talking about amendment to a bill, and</p> <p>12 when you are talking about the one-subject rule, you are</p> <p>13 talking about the entire bill and the subject of that</p> <p>14 particular piece of legislation.</p> <p>15 Q. Okay. Now, turning your time as chief of staff</p> <p>16 for Speaker Straus, when you were in that role did you</p> <p>17 ever participate in legislative drafting?</p> <p>18 MR. SWEETEN: You can answer yes or no.</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever participate in legislative</p> <p>21 drafting relating to voter ID legislation?</p> <p>22 A. No.</p> <p>23 Q. What district does Speaker Straus represent?</p> <p>24 A. 121.</p> <p>25 Q. Do you know what the demographics of that</p>

141

1 district are?

2 A. I know that it's mostly Republican and that's

3 it.

4 Q. Turning back to -- I think you testified

5 earlier about the speaker's responsibilities concerning

6 committee appointments. Does the parliamentarian have a

7 role in committee appointments?

8 A. Yes.

9 Q. What is that role?

10 A. The parliamentarian advises the speaker on

11 seniority, different things like that.

12 Q. Again, would that advice be more procedural

13 rather than substantive?

14 A. Yes.

15 Q. And with regard to the creation of select

16 committees, does the parliamentarian have a role in the

17 creation of those committees?

18 A. A procedural role, yes.

19 Q. What about assignment of bills to the

20 committee? Does the parliamentarian play a role in that

21 assignment process?

22 A. Yes.

23 Q. What is that role?

24 A. The parliamentarian --

25 MR. SWEETEN: Don't reveal any matters

142

1 related to specific legislation. You can answer

2 generally if you can do so without answering

3 specifically.

4 A. The parliamentarian reviews bills and -- to see

5 where they fit in the jurisdiction of the committees and

6 advises the speaker if he has questions, things like

7 that.

8 Q. Can the House overrule a bill referral decision

9 as a matter of procedure?

10 A. I don't know. I've not seen that. I do not

11 know.

12 Q. What about the speaker? Can the speaker

13 overrule a decision concerning bill referral?

14 A. Well, it's the speaker's decision as to where

15 the bills go, so --

16 Q. Okay. So you are advising him and then he's

17 choosing whether to take your advice or not.

18 A. Yes.

19 Q. He or she.

20 A. Right.

21 Q. Now, I know it's a little confusing just

22 because we are kind of jumping around, and you've had

23 different roles, but turning back to the creation of the

24 select committee on voter identification and voter fraud

25 in 2011 when you were the chief of staff for Speaker

143

1 Straus, do you remember when that occurred?

2 A. Yes.

3 Q. And as chief of staff did you have any

4 responsibilities concerning materials that were

5 distributed to the public from the speaker's office?

6 MR. SWEETEN: Can you read that back?

7 (Requested portion was read.)

8 MR. SWEETEN: You can answer.

9 A. Yes.

10 Q. What responsibilities did you have?

11 A. You mean, if we put something on the internet

12 or things like that or letters or -- I'm not clear --

13 Q. Yeah. Well, I'll be more specific. What about

14 press releases? Did you have any responsibilities with

15 regard to press releases?

16 A. Well, the press secretary would distribute

17 those.

18 Q. Did you review them in any way?

19 A. Occasionally I have.

20 (US Exhibit 730 marked.)

21 Q. I have what I guess we'll mark for this

22 deposition as Exhibit 730, please. Have you seen this

23 document before?

24 A. I don't -- I don't remember seeing it, but --

25 Q. Do you know what it is?

144

1 A. It's a -- It's a press release for

2 committees -- committee assignments.

3 Q. And was it released during your time as chief

4 of staff for the speaker?

5 A. If -- It's from the House website. I would say

6 yes.

7 Q. Okay. Turning your attention to just before on

8 the first page of the exhibit, there is like a gap and

9 two lines up from that it says, "Fast track select

10 committee on voter identification, voter fraud." Do you

11 see that?

12 A. Yes.

13 Q. Do you know -- Do you know what it means that

14 this was labeled a fast track committee?

15 A. I don't.

16 Q. Have you ever seen a select committee be

17 labeled a fast track committee before?

18 A. No, I don't, and I don't -- I don't know that

19 that's the correct title. That's the first time I

20 remember seeing that. So I'm not sure why that's there.

21 Q. Okay. Do you recall how many bills passed out

22 of the select committee on the voter identification,

23 voter fraud --

24 A. No.

25 (US Exhibit 731 marked.)

145

1 Q. I think this will be Exhibit 731, please. Do  
 2 you know what this?  
 3 A. Yes. It's a report that was printed out in  
 4 June of this year, bill report.  
 5 Q. What is the bill report referring to?  
 6 A. Senate Bill 14.  
 7 Q. Is a bill report specifically on Senate Bill 14  
 8 or does it seek to list the number of bills out of the  
 9 committee -- on the select committee on voter  
 10 identification and voter fraud?  
 11 A. It's just for Senate Bill 14 or it's all the  
 12 bills that came out of committee, yes, that's true.  
 13 Q. Okay. And how many bills came out of that  
 14 committee?  
 15 A. One.  
 16 Q. That was Senate Bill 14?  
 17 A. Yes.  
 18 Q. So do you know if any other bills were  
 19 considered by the select committee?  
 20 A. I believe other bills were referred to the  
 21 select committee at one point. I don't know if they  
 22 actually took them up or not.  
 23 Q. Do you know SB14, without revealing why, but do  
 24 you know why SB14 was not referred to the elections  
 25 committee?

146

1 A. No.  
 2 Q. In your experience and all of your experience  
 3 in the House is it unusual for a select committee to  
 4 have overlapping jurisdiction with another committee?  
 5 A. No.  
 6 Q. Can you think of other select committees that  
 7 had overlapping jurisdictions with other committees?  
 8 MR. SWEETEN: You can answer as a general  
 9 matter.  
 10 A. School finance, emergency preparedness, special  
 11 districts. There is a number of them. Those would be  
 12 some examples.  
 13 Q. Do you know of any other committees that passed  
 14 only one bill out to the House?  
 15 MR. SWEETEN: You can answer as a general  
 16 matter.  
 17 A. No, I don't. I don't know.  
 18 Q. You don't know of any?  
 19 A. I don't know if -- I don't know. There could  
 20 be some, but I can't -- off the top of my head, I can't  
 21 remember.  
 22 Q. Without revealing the substance, are you aware  
 23 of any communications between Speaker Straus or members  
 24 of his office and other legislators concerning the  
 25 creation of the select committee?

147

1 MR. SWEETEN: You can answer.  
 2 A. Yes.  
 3 Q. Who were those communications between?  
 4 A. I don't -- I know that he conferred with  
 5 different members. I don't know exactly who they were,  
 6 what they discussed, but --  
 7 Q. When you said he, who are you referring to?  
 8 A. The speaker.  
 9 Q. Do you know if the speaker conferred with the  
 10 lieutenant governor's office about the creation of the  
 11 select committee?  
 12 A. I do not.  
 13 Q. Do you know if the speaker conferred with the  
 14 governor's office concerning the creation of the select  
 15 committee?  
 16 A. I don't.  
 17 Q. Now, I think you testified that there was a  
 18 period of time in 2007 through 2009 -- part of 2007  
 19 through part of 2009 when you were not employed by the  
 20 legislature; is that accurate?  
 21 A. Yes.  
 22 Q. Were you aware of a Supreme Court decision,  
 23 Crawford versus Marion County Board of Elections that  
 24 was issued during that time?  
 25 A. No.

148

1 Q. Did you become aware of that decision later on?  
 2 A. No.  
 3 Q. Are you familiar with that today?  
 4 A. No.  
 5 Q. If I told you that that decision concerned the  
 6 constitutionality of a photo ID from Indiana, would that  
 7 refresh your recollection at all?  
 8 A. I vaguely remember them discussing a voter ID  
 9 bill from Indiana, but I don't remember a court case  
 10 about it.  
 11 Q. Okay. So you testified earlier that you have  
 12 some familiarity with the Federal Voting Rights Act; is  
 13 that accurate?  
 14 A. Very general.  
 15 Q. General. Do you believe that compliance with  
 16 the Federal Rights Voting Act is an important  
 17 consideration of the law making process?  
 18 MR. SWEETEN: Don't reveal matters of  
 19 legislative privilege which would be matters that --  
 20 mental impressions, thoughts, motivations regarding  
 21 legislation. If in answering this question you would do  
 22 so, do not answer the question, okay?  
 23 A. Can you reread the question, please?  
 24 Q. I can reread the question actually. Do you  
 25 believe that compliance with the Federal Voting Rights

149

1 Act is an important consideration in the law making  
2 process?

3 A. Yes.

4 MS. BERKOWER: And, Patrick, just to be  
5 clear, can you explain whose privilege -- legislative  
6 privilege she is covered by here?

7 MR. SWEETEN: She's worked for the  
8 speaker -- She worked for the speaker's office. He has  
9 asserted legislative privilege. She has asserted  
10 legislative privilege, therefore, in any answers to  
11 questions, it's definitely subject to legislative  
12 privilege.

13 MS. BERKOWER: I just want to make sure I  
14 understand just because she has been in different roles  
15 in the legislature.

16 MR. SWEETEN: And this question is about  
17 the consideration of the voting rights bill, and, I  
18 mean, your question was about Senate Bill 14, so,  
19 clearly, that's legislatively privileged in that  
20 context, so that's what I'm asserting.

21 MS. BERKOWER: That question didn't  
22 mention Senate Bill 14. I was asking that as a general  
23 matter, and she answered the question, but I know you've  
24 been asserting legislative privilege on her behalf  
25 throughout the day. I just want it to be clear.

150

1 MR. SWEETEN: Understand, Ms. Davis has  
2 had a number of jobs. She is an attorney, so there  
3 would be an attorney-client privilege in many of those  
4 instances that we would assert. She has worked for  
5 legislative staff, and there is a legislative privilege.  
6 She has worked for TLC. That is a legislative privilege  
7 and an attorney-client privilege. So there are  
8 multiple, multiple privileges that apply here with  
9 respect to just I think each one of her jobs that she's  
10 named, and she's -- also, as a private attorney, she  
11 would have attorney-client privilege during that time  
12 period. So she's had a variety of jobs, and there are  
13 numbers of privileges, so I'm instructing her as to  
14 privilege as I have today.

15 MS. BERKOWER: I understand. I just want  
16 to be clear though. With regard to her time  
17 specifically as parliamentarian, can you explain your  
18 assertion of legislative privilege during that time  
19 only? I understand with regard to the other positions  
20 that she's held.

21 MR. SWEETEN: That is subject to the  
22 legislative privilege. She provides advice to  
23 legislators in that capacity. She's advising them, so I  
24 would think that's subject both to the legislative  
25 privilege and probably the attorney-client privilege.

151

1 Q. (BY MS. BERKOWER) Okay. Thank you. Are you  
2 familiar with the law -- a Federal law called the Help  
3 America Vote Act?

4 A. No.

5 Q. Are you currently a member of any community  
6 organizations or groups?

7 A. What do you mean by community organization?

8 Q. I guess I'll be more specific.

9 A. Okay.

10 Q. I'll ask you about a few of them specifically.

11 A. Okay.

12 Q. Are you familiar with a group called ALEC?

13 A. Yes.

14 Q. Are you a member of that group?

15 A. No.

16 Q. Have you ever been a member of that group?

17 A. No.

18 Q. During your time working for Speaker Straus did  
19 you ever receive any documents from ALEC related to  
20 voter ID?

21 A. Not my knowledge, no.

22 Q. Did ALEC ever offer you or Speaker Straus's  
23 office any special assistance on voter ID legislation?

24 A. Not to my knowledge, no.

25 Q. Are you familiar with the national conference

152

1 of state legislators?

2 A. Yes.

3 Q. Have you ever attended any of their meetings?

4 A. Yes.

5 Q. Do you remember when those were?

6 A. Well, I went to the national conference, just  
7 their convention.

8 Q. When did you go?

9 A. Every year that I was parliamentarian and when  
10 I was chief of staff, just to their national meeting.

11 Q. Do you recall attending any sessions concerning  
12 voter ID?

13 A. No.

14 Q. Are there any other groups that focus on policy  
15 advice or assistance to legislators that you have  
16 belonged to?

17 A. No.

18 Q. Any other groups like that that you attend  
19 meetings for?

20 A. No.

21 Q. I'm sorry for the pauses. I'm just trying to  
22 skip over things I think you've already answered.

23 A. That's okay.

24 Q. So now jumping back in time a little bit to  
25 2005 when you were parliamentarian --

<p style="text-align: center;">153</p> <p>1 A. Yes.</p> <p>2 Q. -- in the House. Were you present during all</p> <p>3 of the legislative public debates on HB1706?</p> <p>4 A. That was in 2005?</p> <p>5 Q. Yes.</p> <p>6 A. Yes, I would have been -- Yes. Yes, I would</p> <p>7 have been there.</p> <p>8 Q. During that time did you -- do you recall any</p> <p>9 of the public debates on that bill?</p> <p>10 A. I don't.</p> <p>11 Q. Do you recall if anyone expressed as part of</p> <p>12 the public record that the prevention of noncitizen</p> <p>13 voting was part of the purpose of voter ID bills?</p> <p>14 A. I don't remember.</p> <p>15 MS. BERKOWER: I asked about the public</p> <p>16 record. Don't worry.</p> <p>17 MR. SWEETEN: All right. And general</p> <p>18 purpose is fine.</p> <p>19 Q. Are you aware if any part of the purpose --</p> <p>20 overall purpose of HB1706 was to prevent noncitizens</p> <p>21 from voting?</p> <p>22 A. I don't know.</p> <p>23 Q. During the time that you were present during</p> <p>24 the public debates, were you -- do you remember any</p> <p>25 analysis presented as part of the public record</p>	<p style="text-align: center;">155</p> <p>1 HB218?</p> <p>2 A. I don't know.</p> <p>3 Q. Now, jumping forward again in time to 2009, do</p> <p>4 you know if any members of the House had a role in the</p> <p>5 development of SB362?</p> <p>6 A. I don't know.</p> <p>7 Q. Did you have a role in developing SB362?</p> <p>8 A. No. In 2009?</p> <p>9 Q. Yes.</p> <p>10 A. No. I think the only -- only member that</p> <p>11 probably would have been -- the member that I know of</p> <p>12 that actually would have been involved -- I take that</p> <p>13 back -- is probably Todd Smith, who was chair of the</p> <p>14 elections. Other than that, I do not know, and I did</p> <p>15 not have a role.</p> <p>16 Q. Okay. When a bill comes from -- Now, again,</p> <p>17 you were parliamentarian at this time?</p> <p>18 A. Right.</p> <p>19 Q. So when a bill comes from the Senate as opposed</p> <p>20 to being developed in the House, what is the role of the</p> <p>21 parliamentarian when it arrives?</p> <p>22 MR. SWEETEN: You can answer as a general</p> <p>23 matter.</p> <p>24 A. It gets referred to committee -- to the House</p> <p>25 committee.</p>
<p style="text-align: center;">154</p> <p>1 concerning whether any individual group of voters might</p> <p>2 be adversely impacted by HB1706?</p> <p>3 A. No, I don't remember.</p> <p>4 Q. Are you aware of any studies entered into the</p> <p>5 public record about the number of registered voters</p> <p>6 without allowable forms of ID under HB1706?</p> <p>7 A. No.</p> <p>8 Q. Jumping forward in time to 2007, were you</p> <p>9 present during the legislative debate on HB218?</p> <p>10 A. I don't -- Yes. I don't know if I was in the</p> <p>11 chair or what, but I would have been there in some</p> <p>12 capacity.</p> <p>13 Q. What are the circumstances in which you might</p> <p>14 not be in the chair?</p> <p>15 A. Go take a break or do something in the back or</p> <p>16 something.</p> <p>17 Q. Okay. In an issue of parliamentary procedure</p> <p>18 arose, would you go back to the chair or --</p> <p>19 A. Sometimes. Sometimes the deputy would take</p> <p>20 care of it and sometimes I would.</p> <p>21 Q. Do you recall any supporters of HB218 publicly</p> <p>22 indicate the bill was designed to keep noncitizens from</p> <p>23 voting?</p> <p>24 A. Not to my knowledge. I don't remember.</p> <p>25 Q. Do you know if that was part of the purpose of</p>	<p style="text-align: center;">156</p> <p>1 Q. Is the committee referral process similar to</p> <p>2 what happens when a bill is assigned to committee that's</p> <p>3 generated from the House?</p> <p>4 A. Yes.</p> <p>5 Q. So that's something that you would advise the</p> <p>6 speaker on?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember advising the speaker on SB362?</p> <p>9 A. Not specifically I don't.</p> <p>10 Q. Do you know what the purpose was of SB362?</p> <p>11 MR. SWEETEN: You can answer as to a</p> <p>12 general purpose, if you know.</p> <p>13 A. I don't know the general purpose of it.</p> <p>14 Q. Now, jumping again to 2010, and now at this</p> <p>15 point you were chief of staff for Speaker Straus, I</p> <p>16 think --</p> <p>17 A. Right.</p> <p>18 Q. -- starting in January.</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember any interim charges issued by</p> <p>21 the speaker to committees in 2010?</p> <p>22 A. We issued a -- I know we issued a number of</p> <p>23 charges over the interim, but I can't remember which</p> <p>24 ones we issued, but periodically you would issue a</p> <p>25 number of them.</p>



157

1 Q. What are the general circumstances under which  
2 the speaker would issue interim charges?

3 MR. SWEETEN: You can answer if in doing  
4 so you would not reveal matters of privilege.

5 A. Request of members or just issues that he  
6 thinks are important or not or just a number of reasons.

7 Q. Do you remember if voter ID was one of the  
8 interim -- if an interim charge was issued concerning  
9 voter ID? Actually, I'll withdraw that. I'll restate  
10 it.

11 Do you remember if Speaker Straus issued  
12 an interim charge concerning voter fraud and voter  
13 identification after the 2009 session?

14 A. I don't -- I don't believe that we did, but I  
15 can't remember specifically. I don't think so.

16 (US Exhibit 732 marked.)

17 Q. This might refresh your recollection. Can we  
18 mark this as Exhibit 732? I have to give it to her  
19 first.

20 A. Yes, we did.

21 Q. What did the interim charge ask -- Well, who  
22 was it issued to first?

23 A. It was issued to the elections committee, and  
24 it says, "Examine the prevalence of fraud in Texas  
25 elections, study new laws in other states regarding

159

1 committee was to examine other than election fraud  
2 generally?

3 A. It says, "The prevalence of fraud in Texas  
4 elections." That's all it says.

5 Q. Is there more than one kind of fraud --  
6 election fraud under Texas law; do you know?

7 A. I don't know.

8 Q. Do you know if there's such a thing as  
9 in-person voter fraud?

10 A. I don't know.

11 Q. Turning to Page 27 of the report, which I think  
12 is the third page of this excerpt, do you see that the  
13 report seeks to summarize testimony provided to the  
14 committee?

15 A. Yes.

16 Q. Do you see the third paragraph from the bottom,  
17 the last sentence? Could you read that to yourself,  
18 please -- or, actually, review the whole thing if you'd  
19 like. I should have told you to do that. Sorry.

20 A. Okay.

21 Q. Would you agree that this is a summary of  
22 testimony provided from Jay Dyer from the Attorney  
23 General's office?

24 MR. SWEETEN: You can answer based on the  
25 text of the document.

158

1 voter ID and recommend statutory changes to ensure that  
2 only eligible voters can vote in Texas elections."

3 Q. What is -- As a general matter, when a report  
4 like this comes to you in the legislature, is it  
5 presented to the whole legislature? What happens with  
6 it?

7 A. Well, it's made public. It's public  
8 information, so it's presented to -- it's out there to  
9 everyone, yes.

10 Q. Is there an expectation when an interim charge  
11 is issued that the committee will also develop  
12 legislation at the time that it's working on its report?

13 MR. SWEETEN: Don't reveal matters of  
14 privilege including thought processes and motivations of  
15 legislators in answering this question. If you can't do  
16 so, do not answer it.

17 A. I think it depends on the member of the  
18 committee in what they want to do.

19 Q. Do committees sometimes legislate at the same  
20 time they were working on interim charge?

21 A. Sometimes.

22 Q. Do you know if in this case they did?

23 A. I don't.

24 Q. So Interim Charge No. 3, which you just read  
25 out loud, does it specify what type of fraud the

160

1 A. Yes. It's the committee summary of his  
2 testimony.

3 Q. And does the report state that, "To get a  
4 complete picture of voter fraud in Texas, further  
5 analysis is needed to gather additional information from  
6 local election and law enforcement officials"?

7 A. Yes, it does.

8 Q. Do you know in fact if further analysis of that  
9 nature was conducted?

10 A. I do not.

11 MR. SWEETEN: You can testify to matters  
12 of the public record.

13 A. I don't know.

14 Q. Did the report conclude with a recommendation;  
15 do you know? It's on Page 31.

16 A. Yes. On Page 31, there's a recommendation.

17 Q. What did the committee recommend?

18 A. "The committee recommends that the legislature  
19 adopt legislation requiring voters to show photo  
20 identification in order to cast a ballot at the polls."

21 Q. Does this recommendation suggest that  
22 additional research should be conducted as to the extent  
23 of voter fraud in Texas just based on this paragraph?

24 MR. SWEETEN: Just confine your answer as  
25 to the text that she's showing you right now. Don't

161

1 reveal your thoughts and mental impressions.  
 2 A. I don't know. I don't -- I can't tell from  
 3 this recommendation what it does, but --  
 4 Q. Well, does the text of this recommendation also  
 5 recommend further study of the problem?  
 6 A. I don't see a study in here, so I can't -- it  
 7 just -- I don't see that in here.  
 8 Q. Okay. Now, you testified earlier about SB14 --  
 9 I think we're done with this exhibit for now.  
 10 A. Okay.  
 11 Q. You testified -- You were asked some questions  
 12 about SB14.  
 13 A. Right.  
 14 Q. During your time as the chief of staff for  
 15 Speaker Straus, you mentioned that there was another  
 16 employee, Meredyth Fowler, who was primarily responsible  
 17 for voter ID; is that correct?  
 18 A. Right.  
 19 Q. She was deposed last week, and she said that  
 20 she occasionally spoke with Speaker Straus about the  
 21 issue, but not very frequently. Is it accurate to say  
 22 you were an intermediary between her and Speaker Straus  
 23 on that issue?  
 24 A. From time to time.  
 25 Q. So from time to time --

162

1 A. Yes.  
 2 Q. -- you would --  
 3 A. Yes.  
 4 Q. -- you would replay information she told you to  
 5 Speaker Straus?  
 6 A. Right.  
 7 Q. So I think you had gone through earlier some of  
 8 the terms in SB14 concerning which ID it would permit  
 9 voters to use at the polls; do you recall that?  
 10 A. Yes.  
 11 Q. And one of the types of ID is a driver's  
 12 license from the Department of Public Safety; is that  
 13 accurate?  
 14 A. Yes, that's right.  
 15 Q. Do you know how long a driver's license is  
 16 valid for under Texas law?  
 17 A. I think 12 years maybe. 6 or 12 years. I'm  
 18 not sure.  
 19 Q. Do you know if it's possible to renew your  
 20 driver's license online?  
 21 A. I'm going to be finding out, I think, this  
 22 year, but I don't -- I don't know. I think you can.  
 23 Q. Okay. Do you recall receiving any information  
 24 on the length of time that a driver's license is valid  
 25 from Ms. Fowler concerning voter ID?

163

1 A. No, I don't -- I don't remember.  
 2 Q. Do you know what a military ID is?  
 3 A. No, I don't.  
 4 Q. During your time working on this issue for  
 5 Speaker Straus, do you remember any communications  
 6 concerning military IDs?  
 7 A. No.  
 8 Q. Do you know what a citizenship certificate is?  
 9 A. No.  
 10 Q. Do you recall receiving any information about  
 11 citizenship -- excuse me -- a citizenship certificate --  
 12 A. No.  
 13 MS. BERKOWER: -- in Texas? Okay. And do  
 14 you recall any instances in which you -- Actually, can  
 15 we go off the record for a second?  
 16 (Recess from 3:11 p.m. to 3:48 p.m.)  
 17 Q. (BY MS. BERKOWER) So during your time as chief  
 18 of staff for Speaker Straus, do you recall receiving any  
 19 information from the Department of Public Safety  
 20 about -- relating to voter identification?  
 21 A. About voter identification?  
 22 Q. Just relating to it generally.  
 23 A. I don't remember. We got -- He got stuff about  
 24 driver's license stuff all the time because we had a  
 25 big -- a big DPS bill too, so I don't know if that was

164

1 part of that or not.  
 2 Q. Which DPS bill are you referring to?  
 3 A. It was like a Homeland Security bill or  
 4 something like that. I mean, we had a variety of bills  
 5 related to driver's license stuff and all of that kind  
 6 of stuff, but I don't know if that was voter ID or not.  
 7 Q. Do you remember receiving any information  
 8 concerning the wait times at DPS offices?  
 9 A. Yes.  
 10 MR. SWEETEN: I just want to interpose for  
 11 the record that counsel and I have had an off-the-record  
 12 discussion about a document that's been produced, and so  
 13 she and I will sort that out after the deposition, that  
 14 we've agreed to allow Ms. Davis to answer some questions  
 15 based upon any sort of specific data about wait times.  
 16 Confining it to those questions that are on the email  
 17 that has been produced to counsel, we'll allow those  
 18 questions, and I assume with respect to that -- I mean,  
 19 we're still asserting legislative privilege as to -- as  
 20 to her analysis and thought process regarding that, but  
 21 pursuant to Page 7 of the court's order that learned  
 22 counsel has pointed out to me, we think the fact of  
 23 analysis, that that probably can be discovered. So  
 24 we'll allow limited questioning as to the specific data.  
 25 MS. BERKOWER: That's my understanding as

165

1 well of our conversation. I think there's also a few  
 2 additional facts in that communication -- factual  
 3 information provided by the Department of Public Safety.  
 4 Would you permit questioning on that as well?  
 5 MR. SWEETEN: Yeah. As to whether the  
 6 fact of the analysis occurred, but not as to her  
 7 thoughts or mental impressions or what she did or what  
 8 she implied.  
 9 Q. (BY MS. BERKOWER) That's my understanding.  
 10 Thank you for that clarification. I don't remember what  
 11 I asked you now. I think I asked if you had gotten any  
 12 information about wait times.  
 13 A. Yes.  
 14 Q. Do you remember what that was?  
 15 A. I remember asking how long it took to get a  
 16 driver's license.  
 17 Q. Do you remember what they told you?  
 18 A. Three to four -- Depending on where you were in  
 19 the state. I think longer in the urban areas or  
 20 something like that, three hours.  
 21 Q. Do you remember if there are any cities in  
 22 particular that have long wait times?  
 23 A. I remember hearing that the urban areas did,  
 24 like Dallas and Houston, but I don't -- I don't know if  
 25 they told me that or if I read it somewhere.

166

1 Q. Do you know if DPS gave you information about  
 2 its capacity to help members of the public with their  
 3 transactions?  
 4 A. Yes.  
 5 Q. What was that information?  
 6 A. I remember them saying that it was a personnel  
 7 issue. They needed more money, more personnel.  
 8 Q. Was that also relative to the number -- the  
 9 increase in population state-wide?  
 10 A. I don't remember that.  
 11 Q. Do you know if the population in Texas has  
 12 increased in the last 10 years?  
 13 A. Yes.  
 14 Q. Has it increased?  
 15 A. Yes.  
 16 Q. Has it increased?  
 17 A. Yes, it has. Is that what you are asking me?  
 18 Q. Yes.  
 19 A. Okay.  
 20 Q. Has it increased significantly?  
 21 A. I don't know if it's been significant, but I  
 22 know it has. I don't know the exact number.  
 23 Q. Do you remember around when you received that  
 24 information from DPS?  
 25 A. Sometime in the -- during the session in the --

167

1 probably the spring or something, I'm guessing.  
 2 Q. Do you remember if it was before the House  
 3 voted on SB14?  
 4 A. I don't know.  
 5 Q. Do you remember if it was after the Senate  
 6 passed SB14?  
 7 A. I don't remember.  
 8 Q. Okay. Thank you. I'm just trying to figure  
 9 out where we were. Were you present for the House floor  
 10 debate on SB14?  
 11 A. I was in and out of the chamber during that  
 12 time.  
 13 Q. Were you present when amendments were offered  
 14 and voted on for the bill?  
 15 A. Most of the time I wasn't.  
 16 Q. Did you receive updates on any amendments that  
 17 were offered or voted on for the bill?  
 18 A. Not -- Not really. I was in my office for most  
 19 of it.  
 20 Q. Is there any particular reason you were not  
 21 present during that debate?  
 22 A. Chief of staff is usually in the office -- in  
 23 and out meeting with members, doing things in the back.  
 24 Q. Do you know by any chance how many amendments  
 25 were offered to SB14?

168

1 A. I don't.  
 2 Q. As a general matter -- And I think this might  
 3 draw partly on your knowledge as parliamentarian. When  
 4 or why would an amendment be withdrawn if there's --  
 5 MR. SWEETEN: Objection. Compound. Also,  
 6 don't reveal as to specific legislation as a general  
 7 matter. If you can answer that question, I'll let you,  
 8 but don't reveal matters about specific legislation.  
 9 A. For any number of reasons, drafting error, no  
 10 longer interested in the amendment, doesn't have the  
 11 votes or doesn't do what it wanted, just what the member  
 12 wanted, a number of reasons.  
 13 Q. As a procedural matter if the amendment is  
 14 voted down, can it be reintroduced?  
 15 A. Yes.  
 16 Q. How does that happen?  
 17 A. You would have to reconsider the vote. You  
 18 would have to do a reconsideration of the vote.  
 19 Q. Is it possible that a member might withdraw an  
 20 amendment if they didn't have the votes and then  
 21 reintroduce it later when they did have the votes?  
 22 MR. SWEETEN: You can answer it as a  
 23 general matter. Do not reveal the substance of the  
 24 legislation.  
 25 A. Generally, yes.

169

1 Q. Do you know -- Would you say that the amendment  
2 process for SB14 was typical of bills considered by the  
3 House?

4 MR. SWEETEN: Amendment process of 14, I  
5 think that's requiring her to put in a value judgment as  
6 to whether it was out of the ordinary. I think that  
7 would require her to reveal matters of privilege. I  
8 would instruct her not to answer on that basis.

9 Q. Okay. Are you following his instruction?

10 A. Yes.

11 Q. If I told you there were 70 amendments offered  
12 to SB14, would you view that as a higher or lower  
13 number -- a high number of amendments or a low number of  
14 amendments?

15 MR. SWEETEN: I can let her answer as a  
16 general amendment whether she thinks 70 amendments is  
17 high or low, but I don't think the way it's phrased as  
18 to Senate Bill 14 I can allow it.

19 MS. BERKOWER: I'll rephrase it then.

20 THE WITNESS: Okay.

21 Q. (BY MS. BERKOWER) Is 70 a high number of  
22 amendments?

23 A. It's hard to say. I mean, I've had  
24 amendment -- bills with 800 amendments.

25 Q. What types of bills were those?

170

1 A. General government bills, budget bills, tort  
2 bills. Number of bills.

3 Q. For a bill the size of SB14, speaking as a  
4 general matter, would 730 be a high number of  
5 amendments?

6 A. I think it depends on who you ask. You know, I  
7 don't view that as a lot of amendments, but it just  
8 depends. I mean, some people might. That will just be  
9 my opinion.

10 Q. Do you remember what the publicly articulated  
11 purpose for many of the amendments was for SB14?

12 A. No, I don't.

13 Q. Do you remember if any of the amendments  
14 offered to SB14 were included in the final bill?

15 A. I don't know.

16 Q. Now, I think you testified earlier about a  
17 conference committee.

18 A. Yes.

19 Q. Conference committees in general. I don't  
20 remember if you answered this question. Do you know how  
21 the presiding officer is chosen for a conference  
22 committee?

23 A. You mean, how the chair of the conference  
24 committee is chosen?

25 Q. Yes.

171

1 MR. SWEETEN: She just said do you know  
2 how it's done, so you can just answer yes or no.

3 A. Yes.

4 Q. Is there any non-privileged reason or  
5 explanation you can provide as to how that happens?

6 MR. SWEETEN: Don't reveal the thought  
7 processes, mental impressions of why those are done.

8 A. There is no -- there is no -- I mean, it  
9 just -- usually it's someone that carried the bill or  
10 that has been involved or people that have been involved  
11 with the issue along those lines, expertise.

12 Q. Is there any limit of what the conference  
13 committee can do with the bill?

14 A. Yes.

15 Q. What are those limits?

16 MR. SWEETEN: You can answer as to general  
17 parliamentary procedures of matters of public record.

18 A. That's in Rule 13, Section 9 or somewhere.  
19 It's specific in the rules as to what the jurisdiction  
20 of the conference committees -- what their jurisdictions  
21 are and what they can and can't do.

22 Q. What happens if the conference committee  
23 exceeds its jurisdiction?

24 A. They have to get permission from the House or  
25 the Senate or both. They have to get permission to go

172

1 outside the bound of their jurisdiction.

2 Q. Do you know if that happened for the House with  
3 regard to SB14, whether they sought that permission?

4 A. I don't remember off the top of my head. I'd  
5 have to look at --

6 Q. I think there's an exhibit that Mr. Harris  
7 introduced.

8 A. Yeah.

9 MR. HARRIS: Exhibit 13.

10 MS. BERKOWER: Thank you.

11 A. Yes.

12 Q. They did seek to do that in the House?

13 A. Yes.

14 Q. Did they seek to do that in the Senate?

15 A. Yes.

16 Q. Was that permission granted? Just for the  
17 record, she's looking at a public record, Exhibit 13, so  
18 you can answer based on the public record.

19 A. Yes, it was.

20 Q. It was granted for both houses?

21 A. Yes.

22 Q. How -- Just as a general matter, how is the  
23 decision made whether a conference committee has  
24 exceeded its jurisdiction?

25 A. That is -- I think that's usually done

173

1 between -- that's between the sponsor and legislative  
 2 counsel and their legal advice and -- and the  
 3 parliamentary.  
 4 Q. Do you know what factors are considered when  
 5 that decision is made?  
 6 A. I think they look at each individual thing and  
 7 it's hard to know.  
 8 Q. Did you ever have to make such decisions when  
 9 you were a parliamentarian?  
 10 A. I would sometimes advise members that they --  
 11 that they were going outside of the bounds and that they  
 12 should probably have a resolution, yes.  
 13 (US Exhibit 733 marked.)  
 14 MS. BERKOWER: Okay. I have what will be  
 15 marked 733. Can we go off the record for one second?  
 16 (Recess from 4:00 p.m. to 4:01 p.m.)  
 17 Q. (BY MS. BERKOWER) Do you recognize this  
 18 document?  
 19 A. I don't, but it's -- I don't remember it. It's  
 20 an email from Rhonda Trumble to me.  
 21 Q. Do you know who Rhonda Trumble is?  
 22 A. I assume she works for DPS.  
 23 Q. And what did she do in this email?  
 24 A. It looks to me like she was giving us just a  
 25 general update on driver's licenses and what they were

174

1 doing with the driver's license program and updating  
 2 it -- just giving us an update.  
 3 Q. Do you see the part -- It looks like there's  
 4 some bullet points on the -- toward the bottom of the  
 5 page.  
 6 A. Yes.  
 7 Q. And it looks like those bullet points refer to  
 8 design changes to the license. Do you see that?  
 9 A. Yes.  
 10 Q. Do you see it says they removed all references  
 11 to temporary or visitor from the face of the driver's  
 12 license and ID cards?  
 13 A. Yes.  
 14 Q. And two bullets down from that it says they  
 15 updated the limited term licenses to be of a horizontal  
 16 orientation comparable to other driver's licenses and  
 17 IDs? Do you see that?  
 18 A. Yes.  
 19 Q. Do you know what those bullet points are  
 20 referring to aside from this email?  
 21 MR. SWEETEN: In answering the question,  
 22 don't reveal any thought processes you had pre -- This  
 23 is an email from after the enactment, but if answering  
 24 the questions would require to you reveal your  
 25 pre-enactment thoughts, mental processes or opinions

175

1 about legislation, then don't reveal.  
 2 A. I don't remember.  
 3 Q. Do you know if these design changes were ever  
 4 implemented?  
 5 A. I don't.  
 6 Q. And do you know what these design changes are  
 7 referring to, which types of IDs?  
 8 A. I don't.  
 9 Q. Based on the document, it looks like they refer  
 10 to limited term driver's licenses; is that accurate?  
 11 A. Yes. Yes, it does. Number one says that it's  
 12 for a limited term.  
 13 Q. Do you know who receives limited term driver's  
 14 licenses?  
 15 A. I don't.  
 16 Q. Turning to the -- Well, turning to the second  
 17 page, there's an item marked Item 3. Can you just  
 18 review that paragraph? Let me know when you are done.  
 19 A. Yes, I'm done.  
 20 Q. Do you remember if one of the issues raised in  
 21 the public record during the consideration of SB14 was  
 22 the availability of driver's license facilities to  
 23 provide identification required by the bill?  
 24 A. I don't remember that specifically, but -- it's  
 25 possible, but I don't remember.

176

1 Q. Do you remember if one of the issues raised in  
 2 the public record was that there were not many  
 3 facilities available in urban areas?  
 4 A. No, I don't remember that.  
 5 Q. You did remember though DPS informed you that  
 6 wait times in urban areas were very long?  
 7 A. Right. Yes, I do remember that.  
 8 Q. And this paragraph indicates that the  
 9 legislature included funding for DPS to open six mega  
 10 centers to better serve customers. Do you see that?  
 11 A. Yes.  
 12 Q. Do you know if that relates to a concern that  
 13 there was long wait times in certain areas?  
 14 MR. SWEETEN: I think that would implicate  
 15 matters of privilege, if you are asking if it was in  
 16 response. If this was addressed in response to that  
 17 would require her to reveal legislatively privileged  
 18 information. So my instruction would be don't answer  
 19 the question.  
 20 Q. Okay. Are you following his advice?  
 21 A. Yes.  
 22 Q. Okay. Do you see the last line of the last  
 23 sentence of that paragraph says, "We were not able to  
 24 find a location that was already built and able to give  
 25 us a 10-year lease, so this location is a new build and

177

1 the facility will be built specifically to suit our  
2 office needs?"

3 A. Yes.

4 Q. And that was in reference to a mega center in  
5 the San Antonio area based on this document?

6 A. Yes.

7 MR. SWEETEN: You can answer based on the  
8 document itself.

9 Q. Does that -- Does that sentence imply that  
10 there's going to be some time before the facility is  
11 ready?

12 MR. SWEETEN: You can testify as to what's  
13 in the text of the letter, but don't reveal your  
14 thoughts and mental impressions.

15 A. I really don't know.

16 Q. It will have to be built specifically to suit  
17 the office needs?

18 MR. SWEETEN: Same instruction.

19 A. I don't know how long it would take to do that.

20 Q. Okay. Earlier today you said you would  
21 sometimes talk on the phone with the Senate  
22 parliamentarian to make sure that bills were moving or  
23 there was an efficient movement of bills; is that  
24 accurate?

25 A. Yes.

178

1 Q. How often did you speak with her on that issue?

2 A. Once or twice a week maybe. Not often, you  
3 know, unless it was a specific bill, but not much.

4 Q. Like when would you -- Was there a scheduled  
5 meeting that you would have with her or no?

6 A. No. Usually if we were coordinating -- if  
7 there was a bill on the floor that -- towards the end of  
8 the session maybe, if we were doing the conference  
9 committee report or adopting, so it was sort of  
10 sporadic, frankly. We didn't have regular meetings.

11 Q. Was it -- Was there any instance in which these  
12 conversations would occur where a bill was going to move  
13 from one House to the other?

14 MR. SWEETEN: Just the existence of the  
15 conversation.

16 A. Yes.

17 Q. Did you have any of those conversations  
18 concerning any of the voter ID legislation?

19 A. Oh, I don't remember.

20 Q. You said earlier that generally bills are given  
21 a bill number in the House in the order in which they  
22 are introduced.

23 A. That's generally true.

24 Q. When would that not be true?

25 A. There's a -- Sometimes there are -- low bill

179

1 numbers are reserved for the speaker's office and that's  
2 been the tradition for, you know, many, many years.

3 Q. So how do those bill numbers get assigned?

4 MR. SWEETEN: Don't reveal the process by  
5 which or --

6 THE WITNESS: Right.

7 MR. SWEETEN: You can reveal matters of  
8 public record in answering that.

9 A. The speaker has those numbers, and then they  
10 assign numbers just depending on who would -- you know,  
11 members request the numbers. They usually request a  
12 number.

13 Q. Can you give an example of where a bill was  
14 filed and then refiled with a lower bill number from the  
15 speaker's office?

16 MR. SWEETEN: If it's a public record, you  
17 can.

18 A. Well, refiled?

19 Q. How do they get the lower bill number? Do they  
20 get it upon filing or do they have to re-file it or how  
21 does that work?

22 A. I don't know. I mean, it just varies. I mean,  
23 the appropriations bill is always number one. That's  
24 just tradition. So sometimes members will request a low  
25 bill number, and if it's available, the speaker will

180

1 give it to the member.

2 Q. Okay. Are any of the low bill numbers given to  
3 voter ID legislation by the speaker; do you know?

4 A. I don't remember.

5 Q. You said earlier that a bill might be sent to  
6 Senate with a message.

7 A. M-hm.

8 Q. Can you explain more about what a message is?

9 A. It's just -- it's just -- That's what it's  
10 called. It's like a notice. It's just saying we've  
11 passed these bills, who they are. So it doesn't really  
12 have any substance. It's just a notification to the  
13 Senate that we've taken action on a particular bill.

14 Q. Does every bill get a message?

15 A. They all go over. It's called going over on a  
16 message, so they all go over on a message from the House  
17 sergeant.

18 Q. Okay. I think there was some testimony that  
19 you gave earlier about this amendment being germane.

20 A. M-hm.

21 Q. What are the factors as House parliamentarian  
22 that you considered when assessing whether a bill was  
23 germane?

24 MR. SWEETEN: If these are matters of the  
25 public record and not matters of privilege, then you can



181

1 refer to them. If it reveals your thought process about  
 2 specific legislation, then do not.  
 3 A. The parliamentarian looks at the precedent text  
 4 of the bill and the text of the amendment.  
 5 Q. Is it an exercise of the parliamentarian's  
 6 discretion?  
 7 A. It's really the speaker's discretion, speaker's  
 8 decision.  
 9 Q. Okay. The parliamentarian makes a  
 10 recommendation to the speaker for that as well?  
 11 A. Correct.  
 12 Q. Do you know if House members as a general  
 13 matter ever try to make amendments that aren't germane  
 14 to harm a bill?  
 15 A. Yes, they do.  
 16 Q. Can you think of any instances in which that  
 17 has happened?  
 18 MR. SWEETEN: You can refer to matters of  
 19 the public record.  
 20 A. There are probably lot of examples. I can't  
 21 think of any off the top of my head, but it does happen.  
 22 Q. When they do that, is the idea that they would  
 23 introduce something controversial or how exactly do they  
 24 go about doing that, I guess?  
 25 A. Well --

182

1 MR. SWEETEN: Same instruction.  
 2 A. -- I think they just try to get the amendment  
 3 adopted and see what happens.  
 4 Q. Is the position of parliamentarian a partisan  
 5 position?  
 6 A. No.  
 7 Q. Is it viewed specifically as a nonpartisan  
 8 position?  
 9 A. Yes.  
 10 Q. And you provide -- as parliamentarian, the  
 11 parliamentarian provides advice to any member who asks;  
 12 is that correct?  
 13 A. Yes.  
 14 Q. Do you know of any instances -- Well, actually,  
 15 I won't ask that. I'm getting close to the end.  
 16 So given all of the knowledge you have of  
 17 the public record about voter ID legislation, any bill  
 18 that's come up during your time as either  
 19 parliamentarian or Speaker Straus's chief of staff, are  
 20 you aware of any existing document or report in the  
 21 public record that identifies how many Texas voters are  
 22 in possession of a concealed handgun license?  
 23 A. I don't know.  
 24 Q. And, again, do you know if there's any existing  
 25 document or report in the public record that identifies

183

1 how many minority voters are in possession of a  
 2 concealed handgun license?  
 3 A. I don't know.  
 4 Q. Are you aware of any existing document or  
 5 report in the public record that identifies how many  
 6 Texas voters are in possession of a US military card?  
 7 A. No, I don't know.  
 8 Q. Do you know of any existing document or report  
 9 in the public record that identifies how many minority  
 10 voters are in possession of a -- minority voters in  
 11 Texas are in possession of a US military card?  
 12 A. I do not.  
 13 Q. Are you aware of any existing document or  
 14 report in the -- in the public record that identifies  
 15 how many Texas voters are in possession of a passport?  
 16 A. No, I don't.  
 17 Q. Are you aware of any existing document or  
 18 report that identifies how many Texas minority voters  
 19 are in possession of a passport?  
 20 A. I do not.  
 21 Q. In your view, is one of the purposes of SB14 to  
 22 increase public confidence in elections?  
 23 MR. SWEETEN: Objection. You can provide  
 24 the general purpose of the bill and -- but that's it,  
 25 okay?

184

1 A. The general purpose is to -- to -- just to  
 2 ensure integrity of the elections. That's my  
 3 understanding of the bill.  
 4 Q. What is the evidence in the public record that  
 5 supports that SB14 will in fact increase the integrity  
 6 of elections?  
 7 MR. SWEETEN: Don't answer the question.  
 8 Calls for matters of legislative privilege. Instruct  
 9 not to answer.  
 10 MS. BERKOWER: I asked in the public  
 11 record.  
 12 MR. SWEETEN: No. You asked her what is  
 13 the evidence in the public record that shows that Senate  
 14 Bill 14 will accomplish its purpose which it asks for  
 15 analysis and she can't provide it.  
 16 Q. I'll rephrase that. I'm sorry. Do you know of  
 17 any evidence in the public record -- Well, actually,  
 18 I'll rephrase that. Do you know of any analysis or  
 19 study in the public record that concludes that voter  
 20 identification would enhance public confidence in  
 21 elections?  
 22 A. I don't.  
 23 Q. At any time since the passage of SB14, have you  
 24 come to believe it was passed with any discriminatory  
 25 purpose?



<p style="text-align: center;">5</p> <p>1 PREVIOUSLY MARKED EXHIBITS (CONTINUED)</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 Exhibit 6 House Engrssment, HB No. 218, 87</p> <p>4 Pages 1 through 13</p> <p>5 Exhibit 10 House Committee Report, First 100</p> <p>6 Printing, Senate Bill 326,</p> <p>7 Pages 1 through 9</p> <p>8 Exhibit 11 Legislative Reference Library of 100</p> <p>9 Texas, SB 362, 81st Regular</p> <p>10 Session, downloaded June 13, 2012</p> <p>11 Exhibit 12 Senate Bill No. 14, Pages 1 109</p> <p>12 through 17</p> <p>13 Exhibit 44 House Bill No. 1706, Pages 1 79</p> <p>14 through 10</p> <p>15 Exhibit 80 Letter to Honorable Robert Duncan 209</p> <p>16 from Leticia Van De Putte, R.Ph.</p> <p>17 dated January 21, 2011</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">7</p> <p>1 Q. How many times?</p> <p>2 A. I think twice.</p> <p>3 Q. And can you tell me --</p> <p>4 A. If I remember.</p> <p>5 Q. -- the first time you gave a deposition, what</p> <p>6 kind of case that was?</p> <p>7 A. It was actually a -- I was a minor.</p> <p>8 Q. You were a minor at the time?</p> <p>9 A. Yes. I was a minor at the time. And it was --</p> <p>10 actually, I had been involved in a car accident, so it</p> <p>11 was -- I am sorry. I am having to remember. It was a</p> <p>12 run-of-a-mill car accident with a lawsuit.</p> <p>13 Q. Sure.</p> <p>14 A. Long time ago.</p> <p>15 Q. And how about the second time you gave a</p> <p>16 deposition, what kind of case was that?</p> <p>17 A. That was actually when I worked for the</p> <p>18 Department of Insurance, I was Executive Commissioner</p> <p>19 there. We were -- the State had sued Farmers Insurance</p> <p>20 actually, for discriminatory practices at the time and I</p> <p>21 was kind of the lead staff person in that enforcement</p> <p>22 action.</p> <p>23 Q. Okay. Well, since you have given a couple</p> <p>24 depositions before, I will keep the sort of housekeeping</p> <p>25 and ground rules short. But, obviously, there is a</p>
<p style="text-align: center;">6</p> <p>1 KARINA CASARI DAVIS</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. HARRIS:</p> <p>5 Q. Good morning, Ms. Davis.</p> <p>6 A. Good morning.</p> <p>7 Q. As I told you before, I am Adam Harris. I am</p> <p>8 from the law firm of Fried, Frank, Harris, Shriver &amp;</p> <p>9 Jacobson, LLP. We represent the Texas League of Young</p> <p>10 Voters Education Fund, Defendant-Intervenors in this</p> <p>11 lawsuit.</p> <p>12 Can you start by giving your full name for</p> <p>13 the record, please.</p> <p>14 A. Karina Casari Davis.</p> <p>15 Q. And can you give your address, please.</p> <p>16 A. 5817 Spanish Oaks Boulevard, Austin, Texas</p> <p>17 78738.</p> <p>18 Q. And Ms. Davis, can you please briefly tell me</p> <p>19 about your post high school education, if any?</p> <p>20 A. Yes. I have a Bachelor's Degree from Texas A&amp;M</p> <p>21 University in Political Science.</p> <p>22 Q. Do you hold any other higher education degrees?</p> <p>23 A. No.</p> <p>24 Q. Have you ever given a deposition before?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">8</p> <p>1 court reporter taking down the testimony, so she will</p> <p>2 need you to give a verbal answer as opposed to nodding</p> <p>3 or shaking your head or "uh-huh" or the sorts of things</p> <p>4 we would normally do in conversation.</p> <p>5 We should, also, try not to talk over each</p> <p>6 other, I will certainly try so that the record is easy</p> <p>7 to read.</p> <p>8 If you don't understand a question, you</p> <p>9 should certainly feel free to say that, and I will be</p> <p>10 happy to rephrase. I will try to be clear but I</p> <p>11 certainly will not succeed all the time.</p> <p>12 And your counsel today may make some</p> <p>13 objections. Unless he particularly instructs you not to</p> <p>14 answer a question, you will need to answer the question.</p> <p>15 And to the extent that you need a break</p> <p>16 today, I am happy to take one, so please just let me</p> <p>17 know.</p> <p>18 Can you tell me about each of the jobs you</p> <p>19 have held since graduating college, starting, I guess,</p> <p>20 with your first job out of college.</p> <p>21 A. Uhm, let me think. You probably -- as soon as</p> <p>22 I graduated, I probably helped my parents with their</p> <p>23 business for a little while before I started my first</p> <p>24 real job. I started working for a State Senator from</p> <p>25 Waco by the name of David Sibley in 1992. And I worked</p>

<p style="text-align: center;">9</p> <p>1 for him in various capacities through -- until the 2 beginning of 2002, so about 10 years, and have been a -- 3 I had to work for him in the District as a District 4 Aide, and then I worked as Legislative Aide, as a 5 committee staffer, as his Committee Director and his 6 Chief of Staff at various points in my career with him. 7 After that, I worked at the Department of 8 Insurance for a year. And then I returned to the Senate 9 as the Legislative Director for the current Lieutenant 10 Governor David Dewhurst, did that for about a year, and 11 then became Parliamentarian in the Texas Senate in 2004. 12 Q. And what year did you become the Legislative 13 Director for Lieutenant Governor David Dewhurst? 14 A. When he took office in January of 2003. 15 Q. And then when did you transition from being his 16 Legislative Director to becoming the Senate 17 Parliamentarian? 18 A. I think that was -- I want to say it was April 19 of 2004, we had a special session at the time and the 20 previous Parliamentarian had retired previous to that, 21 so that would be the -- you know, I think April 2004 is 22 probably a safe answer, that's about right. 23 Q. Have you served as Senate Parliamentarian 24 continuously from about April 2004 through today? 25 A. Yes.</p>	<p style="text-align: center;">11</p> <p>1 Q. What were your duties as Legislative Director 2 to Lieutenant Governor David Dewhurst? 3 A. Really, it was to, you know, advise him on 4 legislative policy in the Senate to, you know, I 5 assisted the Parliamentarian, actually, in many ways, 6 and I think the -- it was somewhat of an Assistant 7 Parliamentarian. Really, the Lieutenant Governor has a 8 lot of responsibility when it comes to the Senate 9 calendars, and so their -- as Legislative Director, I 10 was involved in helping schedule the Senate's business 11 from day-to-day. 12 Q. And then I think you said you functioned as 13 something like an Assistant Parliamentarian at times. 14 A. Yes. 15 Q. Is there an official, you know, assistant or 16 Deputy Parliamentarian in the Texas Senate? 17 A. There isn't right now. 18 Q. Has there been in the past? 19 A. Probably, sometimes. 20 Q. Since you became Parliamentarian in or about 21 April 2004, have you ever had a deputy or an Assistant 22 Parliamentarian? 23 A. No, not a formal assistant, no. 24 Q. As Parliamentarian, does anybody report to you, 25 do you have staff at all?</p>
<p style="text-align: center;">10</p> <p>1 Q. And going back to your position with State 2 Senator, did you say Sibley was the name? 3 A. Sibley. 4 Q. Sibley, excuse me. 5 A. Uh-huh. 6 Q. As a Legislative Aide, did you cover, to 7 Senator Sibley, did you cover any particular subject 8 area? 9 A. Education at the time, this was in 1993, that 10 was probably my biggest subject for him. 11 Q. And then you said, you were a committee staffer 12 and then a Committee Director. 13 A. Uh-huh. 14 Q. Was that for a particular committee, I assume? 15 A. Initially, it was the Economic Development 16 Committee. The name was changed at some point, it 17 became the Senate Business and Commerce Committee. 18 I should say, there were probably some 19 interim committees that were special committees that I, 20 also, directed during that time frame, all related to 21 economic development of business and commerce. 22 Q. And as Legislative Director to Lieutenant 23 Governor David Dewhurst, did you cover a particular 24 subject area? 25 A. No. No.</p>	<p style="text-align: center;">12</p> <p>1 A. I have an assistant in the office, yes, one 2 person. 3 Q. And are you employed by Lieutenant Governor 4 Dewhurst? 5 A. I am employed -- well, I am an officer of the 6 Senate, and the Senate decrees that I am an officer and 7 in a resolution that they adopt allows the Lieutenant 8 Governor to appoint my position. 9 Q. Did Lieutenant Governor Dewhurst appoint you to 10 be the Senate Parliamentarian in 2004? 11 A. Yes. 12 Q. Where -- do you have an office in the Senate? 13 A. Yes. 14 Q. Where is your office located? 15 A. It's located in front of the Senate Chamber 16 adjacent to the Sergeant at Arms. 17 Q. What are your duties as Senate Parliamentarian? 18 A. Generally, it is to advise the presiding 19 officer and the senators on the rules and procedures of 20 the Texas Senate. 21 Q. As either aide to Senator Sibley or as 22 Legislative Director to Lieutenant Governor Dewhurst, 23 did you ever have any involvement with Texas election 24 law or issues around voting? 25 A. If I did, it was -- I really -- I don't</p>

<p style="text-align: center;">17</p> <p>1 Q. Is it ever the case that the Lieutenant 2 Governor seeks to introduce a bill via another member of 3 the Senate? So, for instance, the Lieutenant Governor 4 wants a bill to be passed and given what you just said, 5 he doesn't have the power to introduce the bill, is it 6 ever the case that he would ask another member to file a 7 bill for him? 8 A. Probably. 9 Q. You said that the Lieutenant Governor rules on 10 questions or points of order; is that right? 11 A. That's right. 12 Q. Does he consult you when a point of order is 13 raised? 14 A. Yes. 15 Q. And I assume part of your job is to advise him 16 on your view with respect to the point of order that's 17 been raised? 18 A. Yes. 19 Q. Is the Lieutenant Governor obligated to take 20 your advice? 21 A. No. 22 Q. Can the Lieutenant Governor vote on 23 legislation? 24 A. Only in the case of a tie. 25 Q. Are there any other instances in which the --</p>	<p style="text-align: center;">19</p> <p>1 Committee of the Whole, things of that nature. 2 Q. What is the purpose of using the Committee of 3 the Whole as opposed to -- well, let me step back. 4 Bills are normally -- am I correct that bills are 5 normally referred to a particular committee that has 6 jurisdiction over particular subject matter relating to 7 that bill? 8 A. I think, frequently, that's the case. But the 9 Committee of the Whole in the Senate has been used quite 10 a bit for legislation, especially in the last 30 11 years -- 12 Q. How -- 13 A. -- in lieu of the standing committee. 14 Q. How frequently is the Committee of the Whole 15 process used for bills in the Senate as opposed to 16 sending a bill to a standing committee? 17 A. Uhm. Well, I think that the Senate tends to 18 use the Committee of the Whole for legislation for which 19 it -- the Senate deems it more beneficial to have the 20 input of every single member of the Senate as opposed to 21 a subset of the Senate. The standing committee might 22 have 10 members, whereas, the Committee of the Whole 23 would have 31 members. So the kinds of bills that go to 24 the Committee of the Whole are for bills that the Senate 25 deems would benefit from an exchange amongst the 31</p>
<p style="text-align: center;">18</p> <p>1 beyond a tie, are there any other instances in which the 2 Lieutenant Governor has the authority to vote on a 3 particular bill? 4 A. He has the authority within the Committee of 5 the Whole to vote and debate on any matter before the 6 Committee of the Whole. 7 Q. And what is the "Committee of the Whole"? 8 A. The "Committee of the Whole" is a parliamentary 9 device with historical roots in parliament. It is 10 essentially a meeting of the full Senate outside of 11 session. It is an informal meeting where the Senate 12 would consider a wide variety of things on an informal 13 basis. And by "informal," I mean, not bound by the 14 traditional rules of procedure governing debate in full 15 session. 16 Q. When you say that the Committee of the Whole 17 process is not bound by the formal rules of debate, what 18 sort of rules are you referring to? 19 A. Rules such as, that you don't get to speak a 20 second time unless every member of the Senate has 21 already had an opportunity to speak once. Generally, in 22 a Committee of the Whole, any limitations on debate that 23 the full body might have would not be allowed in 24 Committee of the Whole unless the Senate itself in 25 session chose to place limits on discussion in the</p>	<p style="text-align: center;">20</p> <p>1 senators as opposed to fewer. 2 Q. And since you became Senate Parliamentarian in 3 or around April 2004, would you be able to quantify how 4 many -- how many times the Committee of the Whole 5 process has been used as opposed to sending a bill to a 6 standing committee? 7 A. Yes. Since 2004, I believe we -- it was used 8 for school finance. And then probably for voter ID 9 legislation. 10 Q. Can you think of any other bills that went to 11 the -- since you became Senate Parliamentarian, that 12 went to the Committee of the Whole rather than a 13 standing committee or another committee? 14 A. I don't remember if we referred anything else 15 to the Committee of the Whole. I do remember the Senate 16 resolving for those two purposes. 17 Q. As a general matter, putting aside any 18 particular bill or piece of legislation, why would the 19 Senate use the Committee of the Whole process as opposed 20 to sending a bill to a committee with particular 21 jurisdiction over some subject matter? 22 A. I think, generally, for the reasons I just 23 explained. 24 Q. And I think what you were saying is that, the 25 Committee of the Whole involves the entire Senate,</p>

21

1 whereas, a standing committee or another committee would  
2 only have 10 or so members; is that right?

3 A. For example, yes.

4 Q. And what's the benefit or -- what's the benefit  
5 of sending a bill to the Committee of the Whole with 31  
6 members as opposed to a committee that has fewer  
7 members?

8 A. I think the benefit is that you have greater  
9 deliberation. It allows the Senate to all -- basically,  
10 31 members would have equal rights of participation  
11 within the Committee of the Whole. And by "equal  
12 rights," I mean, equal rights to amend a bill in  
13 committee, equals rights to question witnesses, equal  
14 rights to debate within the informal confines of a  
15 committee structure.

16 Q. And when you say that the Committee of the  
17 Whole process lends itself to greater deliberation, are  
18 you able to elaborate on that beyond what you have just  
19 described?

20 A. Well, when the Senate is in session, I think --  
21 you know, we have rules of debate. Things like, you  
22 should always address the President. Committee of the  
23 Whole is just -- it is an informal meeting of the Senate  
24 where they can have full debate, question each other,  
25 without having to worry about framing their questions

22

1 and conforming to the rules of debate on the Senate  
2 floor.

3 The Committee of the Whole has been used  
4 for investigations, for other purposes, any time the  
5 committee -- the Senate, as a whole, determines informal  
6 debate in consideration would be beneficial.

7 Q. Can you walk me through the process of how a  
8 bill gets filed or introduced in the Senate.

9 A. Sure. A member of the Senate -- you want me to  
10 walk you through, administratively, what they would  
11 actually do?

12 Q. Yes, please.

13 A. Our process in the Senate is, once you have a  
14 piece of legislation, you get what we call "an orange  
15 back" where you -- it is stapled to the back of the bill  
16 on this orange back, has a place for the caption which  
17 is required by the rules that basically notifies the  
18 members in the public, generally, what the bill is  
19 about, a member would sign that legislation. The orange  
20 back has room on the back where -- when the bill goes  
21 through the process of the Senate, it might be stamped  
22 with where it was referred that actions that take place  
23 on the bill. But essentially, a member of the Senate or  
24 the staff would take this bill to the Calendar Clerk  
25 where it is given a number and at some point all of

23

1 these actions are entered into the Senate Journal.

2 Q. When you say "a bill is given a number," what  
3 is the significance of the number that the bill is  
4 given?

5 A. Not really any significance, it is just a  
6 sequential numbering system for identifying bills.

7 Q. So is it the case that the first bill filed in  
8 a session would be given Bill No. 1, the next bill would  
9 be given No. 2 and so on?

10 A. Not necessarily. Sometimes we go out of order  
11 for the convenience of the members.

12 Q. Is it ever the case that certain low bill  
13 numbers are reserved?

14 A. Yes. We do reserve some bill numbers.  
15 Traditionally, for example, the budget is considered  
16 very important and, also, we give it the designation of  
17 one and that is for the convenience of the members, they  
18 always know budget bill is Senate Bill 1.

19 House does the same. Theirs is House Bill  
20 1 every time, almost every time, I should say.

21 Q. Have you ever heard of members camping out to  
22 file legislation?

23 A. Yes.

24 Q. And what does that refer to when members, what  
25 do you take that to mean when members camp out, what are

24

1 you describing?

2 A. You know, I think some members think that a  
3 lower bill number gives them -- you know, I think  
4 they -- they think that it signals to maybe the  
5 membership and the public that their piece of  
6 legislation was first in idea, perhaps, or sometimes we  
7 get multiple pieces of legislation on the same subject  
8 and so some members think that if they have a lower bill  
9 number, that indicates to the Senate that, perhaps, they  
10 came up with the idea first. There are many members who  
11 don't think that, some -- and don't camp out.

12 Q. Does the bill number have any affect on when a  
13 bill gets considered by a committee?

14 A. Not at all.

15 Q. Does it have any affect on when a bill gets  
16 considered, if at all, by the entire Senate on the  
17 floor?

18 A. No.

19 Q. After a bill is filed, what's the next step in  
20 the legislative process, what happens to it? I think  
21 you said it -- it is filed with the Calendar Clerk; is  
22 that right?

23 A. Yes.

24 Q. What's the next step after that?

25 A. The next step under the rules is that, the



<p style="text-align: center;">25</p> <p>1 Lieutenant Governor, the Presiding Officer, would refer</p> <p>2 the bill to a committee.</p> <p>3 Q. And in this case, Presiding Officer, you're</p> <p>4 referring to Lieutenant Governor; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. As a general matter, without regard to any</p> <p>7 particular bill, how does the Lieutenant Governor decide</p> <p>8 which committee to assign a bill to?</p> <p>9 A. Generally, the Lieutenant Governor would</p> <p>10 consider the subject of the legislation and consider</p> <p>11 what committee might have the expertise to deliberate</p> <p>12 that piece of legislation for the Senate to make</p> <p>13 recommendations to the Senate.</p> <p>14 Q. Is it ever the case that a bill could fall</p> <p>15 under the jurisdiction of more than one committee?</p> <p>16 A. Yes.</p> <p>17 Q. And in those sorts of cases, as a general</p> <p>18 matter, how does the Lieutenant Governor go about</p> <p>19 deciding which of those two or more committees to assign</p> <p>20 the bill to?</p> <p>21 A. He might look at where that kind of legislation</p> <p>22 has gone before previously. He might determine that a</p> <p>23 bigger committee may -- may -- may serve the bill -- may</p> <p>24 provide better deliberation and input for a bill than</p> <p>25 maybe a smaller committee. He may be requested to send</p>	<p style="text-align: center;">27</p> <p>1 when you help the Lieutenant Governor deliberate on that</p> <p>2 question, do you employ the same sorts of criteria that</p> <p>3 you just talked about, such as the size of the</p> <p>4 committee, which committee has jurisdiction over the</p> <p>5 subject matter?</p> <p>6 A. Yes.</p> <p>7 Q. Are there any other factors that you take into</p> <p>8 account?</p> <p>9 A. I think, generally, I put forward the -- the</p> <p>10 bigger factors.</p> <p>11 Q. How about in deciding whether to assign a bill</p> <p>12 to the Committee of the Whole, as a general matter would</p> <p>13 the Lieutenant Governor consult you as a Parliamentarian</p> <p>14 in deciding whether to assign a bill to the Committee of</p> <p>15 the Whole as opposed to another committee of the Senate?</p> <p>16 A. He may.</p> <p>17 Q. Did you discuss the fact that you were giving a</p> <p>18 deposition today with anybody?</p> <p>19 A. Yes.</p> <p>20 Q. Who did you discuss it with?</p> <p>21 A. My husband, my assistant at work, it probably</p> <p>22 came up with close friends.</p> <p>23 Q. Did you discuss the substance of what you might</p> <p>24 say today with anybody, other than attorneys?</p> <p>25 A. No.</p>
<p style="text-align: center;">26</p> <p>1 a bill to a particular committee. There is probably a</p> <p>2 wide variety of factors that he could take into</p> <p>3 consideration.</p> <p>4 Q. And when you say, "the Lieutenant Governor may</p> <p>5 be requested to send a bill to a particular committee,"</p> <p>6 who would make such a request?</p> <p>7 A. Frequently -- okay.</p> <p>8 MR. FREDERICK: Let me just object --</p> <p>9 A. Okay.</p> <p>10 MR. FREDERICK: -- on the basis of</p> <p>11 privilege. I think the question is just calling for a</p> <p>12 general matter. But I want to caution you not to reveal</p> <p>13 any specific request or conversation between a member of</p> <p>14 the Senate and the Lieutenant Governor. But subject to</p> <p>15 that instruction, you may answer the question.</p> <p>16 A. Sure. Sometimes a member who files a bill sits</p> <p>17 on a committee where that committee might have</p> <p>18 jurisdiction, and so the member, out of convenience, may</p> <p>19 ask for the bill to go to that particular committee, as</p> <p>20 an example of why a member would request a referral.</p> <p>21 Q. (By Mr. Harris) As the Parliamentarian, does</p> <p>22 the Lieutenant Governor ever consult with you regarding</p> <p>23 which committee to send a bill to?</p> <p>24 A. Yes.</p> <p>25 Q. And when you -- when you, as a general matter,</p>	<p style="text-align: center;">28</p> <p>1 Q. Did you discuss --</p> <p>2 A. Oh, I take that back, my assistant.</p> <p>3 Q. And what did you discuss with your assistant</p> <p>4 about the substance of today's deposition?</p> <p>5 A. Probably more of my concerns and worries that I</p> <p>6 wouldn't remember things but not anything very specific</p> <p>7 Q. Were there particular things you were worried</p> <p>8 about not remembering?</p> <p>9 A. Yes. As I mentioned previously, we have lots</p> <p>10 of legislation in the Senate and sometimes I don't</p> <p>11 recall, you know, very specific events.</p> <p>12 Q. Did you meet with any attorneys in preparation</p> <p>13 for today's deposition?</p> <p>14 A. Yes, my counsel.</p> <p>15 Q. And who is your counsel?</p> <p>16 A. Matt Frederick.</p> <p>17 Q. And how many times did you either meet with or</p> <p>18 speak to Mr. Frederick about the deposition prior to</p> <p>19 today, or I guess including today?</p> <p>20 A. Probably two or three times.</p> <p>21 Q. And when -- were those in person meetings or --</p> <p>22 A. One of them was, yes, or actually probably two</p> <p>23 of them.</p> <p>24 Q. And when did those in person meetings take</p> <p>25 place?</p>

29

1 A. Yesterday and today.  
 2 Q. And how long did you meet with Mr. Frederick  
 3 yesterday?  
 4 A. Probably, maybe two to three hours and probably  
 5 weren't meeting the entire time.  
 6 Q. And how about today, how long did you meet with  
 7 Mr. Frederick today?  
 8 A. Maybe 20 minutes.  
 9 Q. And did you have any other contact with  
 10 Mr. Frederick in preparation for the deposition, other  
 11 than those two in person meetings?  
 12 A. We had a phone call.  
 13 Q. And when did that take place?  
 14 A. Late yesterday.  
 15 Q. And how long did -- how long did the phone call  
 16 last?  
 17 A. You know, 10 to 20 minutes.  
 18 Q. Other than the searches for the bill histories  
 19 with respect to SB 14 that you talked about doing on  
 20 your computer, did you review any other sources or  
 21 documents in preparation for the deposition?  
 22 A. You know, probably -- I reviewed the rules,  
 23 although I do that frequently anyways. I frequently  
 24 read parliamentary authorities. I have been working on  
 25 some research on some other things and -- for instance

30

1 you know, just general parliamentary law.  
 2 Q. As Parliamentarian, do you have any role with  
 3 respect to the -- to the substance of legislation as  
 4 opposed to the procedure?  
 5 A. No.  
 6 Q. Do you review or read every bill that gets  
 7 filed with the Senate?  
 8 A. Usually, yes.  
 9 Q. Let's go back to the -- to the legislative  
 10 process. I think where we left off, you had said that,  
 11 after the bill gets filed with the Calendar Clerk, the  
 12 Lieutenant Governor makes a decision about which  
 13 committee to appoint the bill to; is that right?  
 14 A. Yes.  
 15 Q. And what's the next step in the process at that  
 16 point?  
 17 A. Once that determination is made, the bill is  
 18 read on its first reading in front of the Senate, read  
 19 first reading and referral where the committee of  
 20 referral is announced in the Senate and the bill is  
 21 actually referred. At that point, as I mentioned  
 22 previously, we have an orange back on the bill, it is  
 23 stamped with the committee that it's been referred to,  
 24 the bill goes back to the Calendar Clerk at that time.  
 25 Q. Why does it go back to the Calendar Clerk?

31

1 A. She and the Secretary of the Senate or the  
 2 custodian of the bills in the Senate.  
 3 Q. And after the Bill is referred to the  
 4 committee, read for the first time on the Senate floor  
 5 and then goes back to the Calendar Clerk, what happens  
 6 next?  
 7 A. Sometimes nothing. The bill is scheduled for  
 8 hearing in a committee. The committee clerk of that  
 9 committee would probably go to the Calendar's Clerk and  
 10 check the bill out for the committee's work.  
 11 Q. What has to happen for the bill to go from  
 12 committee to the Senate floor for consideration by the  
 13 entire Senate, assuming we are not talking about the  
 14 Committee of the Whole but a regular committee?  
 15 A. Generally, a committee would have to make a  
 16 recommendation to the full Senate that the bill be  
 17 passed or not passed but usually that it would be  
 18 passed.  
 19 Q. And in making those recommendations, is there a  
 20 committee vote --  
 21 A. Yes.  
 22 Q. -- on the bill? And is it -- what vote would  
 23 be required to recommend the bill to the -- to the  
 24 entire Senate, to recommend to the entire Senate that  
 25 the bill be passed?

32

1 A. For standing committees, I think those  
 2 procedures require a majority of the membership of the  
 3 committee.  
 4 Q. And assuming that a bill receives a vote from  
 5 majority of the membership of the committee to recommend  
 6 it for passage to the entire Senate, what's the next  
 7 step of the legislative process after that?  
 8 A. Well, if the author of the bill chooses to move  
 9 it forward, the bill, once it's reported from Committee,  
 10 becomes part of the Senate's Regular Order of Business.  
 11 A senator choosing to move that bill forward, may choose  
 12 to -- could choose to submit it to the local calendar to  
 13 the Administration Committee for consideration on a  
 14 local calendar. He or she could choose to have the bill  
 15 brought up for consideration in the full Senate for  
 16 debate.  
 17 Q. Okay. You referred to -- "could be a matter of  
 18 Regular Order of Business."  
 19 A. Uh-huh.  
 20 Q. What does that mean?  
 21 A. The "Regular Order of Business" is what's  
 22 considered the Senate's general calendar for bills and  
 23 resolutions.  
 24 Q. And how does that work?  
 25 A. The Regular Order of Business is formed under

33

1 the rules. The rules provide that, as bills are  
2 reported from a Senate committee, that the Calendar  
3 Clerk or the Secretary of the Senate is to note the date  
4 and time that those bills are actually submitted, so it  
5 wouldn't be when they are voted out of committee but  
6 when they are actually reported back to the committee,  
7 to the Senate from the committee, excuse me. And so the  
8 Regular Order of Business is formed in the order in  
9 which bills are reported out. But there is a precedent  
10 within the rules, for example, joint resolutions would  
11 take precedence over Senate bills. So if two bills are  
12 reported at different times, joint resolutions are in a  
13 category of themselves above Senate bills in the Regular  
14 Order of Business.

15 Q. So putting aside joint resolutions, is it the  
16 case that bills that are put on the general calendar  
17 would be considered by the full Senate in the order in  
18 which they were submitted to the general calendar?

19 A. That's what the rules require.

20 Q. And you said that the author of the bill could  
21 make the decision to place the bill on the local  
22 calendar?

23 A. Yes.

24 Q. Is that right? What's the "local calendar"?

25 A. The "local calendar" is a designated meeting of

34

1 the Senate to consider a separate calendar. Bills on  
2 the local calendar are still part of the general  
3 calendar but they are considered at a different time.  
4 Essentially, bills that are uncontested in committee and  
5 that are recommended by the chairman of the committee  
6 from which they are reported have the ability to be set  
7 on the local calendar by the Administration Committee,  
8 an author of a bill who chooses to place his bill on the  
9 local calendar would make a request to the  
10 Administration Committee that his bill -- his or her  
11 bill be certified for the local calendar. The  
12 Administration Committee would meet and consider the  
13 request. And if they thought that the bill should be on  
14 the local calendar, and there are some requirements for  
15 what kinds of bills can be on there and what can't, but  
16 generally they would consider all the bills requested at  
17 a particular time. They would determine which will be  
18 certified. They would produce a calendar, and then the  
19 Senate -- and the calendar would set a time for the  
20 Senate to consider those bills.

21 Q. As a general matter, why would an author of a  
22 bill choose to place the bill on the local calendar as  
23 opposed to the general calendar?

24 A. I think it's probably really for efficiency  
25 sake. Bills on the local calendar, you know, are not

35

1 debated, they cannot be amended. And they are -- while  
2 they are uncontested in committee, on the Senate floor,  
3 members can vote against them but it is unlikely, you  
4 know, that there would be enough opposition that the  
5 bill would fail to pass.

6 Q. Does the Lieutenant Governor play any role in  
7 deciding which calendar to assign a bill to?

8 A. I think probably a minor role. The authors  
9 choose whether they are going to go to the local  
10 calendar. If there is a bill being considered by the  
11 Administration Committee, which the Lieutenant Governor  
12 you know, thinks should be considered for full debate on  
13 the Senate floor from time to time, that indication may  
14 be made, but usually not.

15 Q. So assuming that a bill gets placed on the  
16 general calendar, what's the next step in the process in  
17 terms of the bill being considered -- well, let me ask  
18 you this. Do all bills on the general calendar  
19 eventually get considered by the full Senate?

20 A. No.

21 Q. So --

22 A. Not in their bill form, no.

23 Q. What do you mean when you say, "not in their  
24 bill form"?

25 A. Well, sometimes bills are on the Regular Order

36

1 of Business, the Senate bills is on the Regular Order of  
2 Business that's been reported out and through the  
3 process, maybe it is companion House Bill has come over  
4 from the House, you know, might be the equivalent or  
5 very similar to the bill. And at that point, that  
6 bill -- House Bill would be more advanced in the  
7 legislative process, so Senate author or the Senate  
8 sometimes is required by rule to do this, would then  
9 choose to move the House bill instead of the Senate  
10 bill. So that Senate bill would, you know, just remain  
11 always part of the Regular Order of Business and never  
12 taken up.

13 Q. And once a bill is on the general calendar,  
14 what dictates whether it will be heard by the full  
15 Senate or not?

16 A. Once it's on the Regular Order of Business?

17 Q. Uh-huh.

18 A. Again, it -- you know, the author plays a big  
19 role in that. But in the Senate, you know, the Senate  
20 doesn't always follow its regular order. I think it's  
21 pretty well-known that we have a -- the Senate has a  
22 rule, like most legislative bodies, where it can suspend  
23 its calendars to take bills out of order, so that  
24 happens.

25 Q. What is the process for suspending the regular

37

- 1 calendar and taking a bill out of order?
- 2 A. It's made by motion.
- 3 Q. Who makes that motion?
- 4 A. The author of a bill, usually.
- 5 Q. And is a particular vote required to suspend
- 6 the Regular Order of Business and take the bill out of
- 7 order?
- 8 A. Yes. It's two-thirds of the members present
- 9 voting.
- 10 Q. And once a bill is taken up by the full Senate,
- 11 let's say it is put on the general calendar and that it
- 12 does get considered by the full Senate, what's the next
- 13 in the process, what happens at that point?
- 14 A. After the motion to suspend the Regular Order
- 15 of Business is made, is that your question?
- 16 Q. Let's assume for now that it is a Regular Order
- 17 of Business and it is being called up in the regular
- 18 order.
- 19 A. Okay. So the Senate -- the assumption is that
- 20 the Senate is following its calendars.
- 21 Q. Yes.
- 22 A. Okay.
- 23 Q. What does the Senate do at that point, is there
- 24 a floor debate?
- 25 A. Well, if the Senate is following its calendar,

38

- 1 the Presiding Officer would lay the bill before the
- 2 Senate for consideration on second reading. At that
- 3 point, it is open for debate and you would have debate
- 4 on the bill. Once the debate is concluded, in order for
- 5 the bill to move forward, a member would make a motion
- 6 to pass the bill to either engrossment or third reading.
- 7 Q. And what's "engrossment" mean?
- 8 A. "Engrossment" is the term that we use for bills
- 9 that are passed on second reading and in the originating
- 10 chamber. In other words, if it is a Senate Bill
- 11 considered on second reading in the Senate then it is
- 12 passed to engrossment. If it is a House Bill passed on
- 13 second reading, in the Senate Chamber, it is passed to
- 14 third reading.
- 15 Q. I see. And at that point, there is a vote of
- 16 the full Senate on the bill; is that right?
- 17 A. Yes.
- 18 Q. And assuming that the bill passes, I take it
- 19 that that's the last step in the process on the Senate
- 20 side for a bill or is there something else?
- 21 A. Well, no. We have a requirement of three
- 22 readings. The first reading being on referral, that
- 23 would be the second reading. Once its passed to
- 24 engrossment or third reading for the bill to be passed
- 25 out of the Senate, it has to be debated again or

39

- 1 considered again, actually, I should say, considered
- 2 again --
- 3 Q. And then --
- 4 A. -- actually.
- 5 Q. Excuse me. And then there is another vote
- 6 taken at that point.
- 7 A. Yes. And that would be for final passage.
- 8 Q. I see. So you just described the process,
- 9 assuming that the Senate was proceeding in the Regular
- 10 Order of Business. How would the process differ if the
- 11 Senate suspended the Regular Order of Business and took
- 12 a bill out of order?
- 13 A. It would be the same.
- 14 Q. So the only difference is when -- with respect
- 15 to suspending the Regular Order of Business is when a
- 16 bill gets considered?
- 17 A. Yes. Because either the Senate is following
- 18 the calendar or it isn't. The calendar is meant to
- 19 provide a predictable system of when bills are going to
- 20 come up. So if it was taken out of offered, you would
- 21 have a motion to suspend that calendar. Beyond that,
- 22 the bill would take the same process.
- 23 Q. I am sorry to jump around, but I want to go
- 24 back to a couple of points that we were discussing
- 25 before. When you met with Mr. Frederick on those two

40

- 1 occasions, was anybody else present during those
- 2 meetings?
- 3 A. There was another attorney yesterday present
- 4 from the Attorney General's Office for part of the
- 5 meeting.
- 6 Q. And do you remember which attorney that was?
- 7 A. Yes. Stacey Napier.
- 8 Q. And how about on the phone call that you had
- 9 later on yesterday with Mr. Frederick, was anybody else
- 10 on the call?
- 11 A. No.
- 12 Q. And is the Parliamentarian a partisan position?
- 13 A. No.
- 14 Q. Do you consider yourself to be a Democrat or a
- 15 Republican or something else?
- 16 MR. FREDERICK: Objection, relevance. You
- 17 can answer.
- 18 Q. (By Mr. Harris) You can answer the question.
- 19 A. Uhm. You know, I think probably I have
- 20 considered myself to be conservative in my voting.
- 21 Q. What is the purpose of having a rule -- as a
- 22 general matter, what's the purpose of having a rule
- 23 whereby the Senate could vote to consider a bill out of
- 24 order?
- 25 A. Can you state your question again?

41

1 Q. Sure. Do you know why there is a rule that  
2 allows the Senate to vote by, you know, generally  
3 two-thirds of the members present to consider a bill out  
4 of order?  
5 A. That's just standard parliamentary practice in  
6 legislative bodies throughout the country.  
7 A calendar system exists for the benefit  
8 of the members to provide predictability and a certainty  
9 of as to when a business is going to come before the  
10 body. So it is considered that if you are going to take  
11 something out of order, it's a -- potentially, a  
12 violation of the member's fundamental rights in not  
13 being apprised of that, and so it generally takes a  
14 super majority to go out of order.  
15 Q. How common is it for a bill to be considered  
16 out of order, as opposed to proceeding under the Regular  
17 Order of Business in the Senate?  
18 A. It is fairly common for -- for general bills, I  
19 would say.  
20 Q. Are you familiar with the term "Blocker Bill"?  
21 A. Yes.  
22 Q. What's a "Blocker Bill"?  
23 A. A "Blocker Bill" is generally a bill that would  
24 be at the very top of that regular calendar and  
25 sometimes it is set there on purpose and sometimes it is

42

1 just there and it is the first bill. And because it is  
2 the first bill on the calendar, if it is not taken up,  
3 other bills would be taken -- would have to, by  
4 definition, be taken up out of order.  
5 Q. Is there generally a Blocker Bill in place each  
6 session?  
7 A. I would say, since the early 1950s, that for  
8 Regular Sessions, there is usually a bill at the top of  
9 the calendar, it can be passed. Sometimes the Blocker  
10 Bill changes. For special sessions, there are probably  
11 many instances where a blocker bill is not used.  
12 Q. Has the Blocker Bill -- has a Blocker Bill been  
13 used in all the Regular Sessions since you have been the  
14 Parliamentarian in the Senate?  
15 A. All of the Regular Sessions, yes.  
16 MR. HARRIS: Why don't we take a short  
17 break, if you don't mind.  
18 A. Sure.  
19 (Brief recess.)  
20 Q. (By Mr. Harris) We were talking before about  
21 the ability of the Lieutenant Governor to assign a bill  
22 to the Committee of the Whole as opposed to a regular  
23 committee. Are there any limitations on the Lieutenant  
24 Governor's ability to assign a bill to the Committee of  
25 the Whole as opposed to a different committee?

43

1 A. "Limitations," I am not sure I know what you  
2 mean.  
3 Q. Are there any types of bills, for instance,  
4 that the Lieutenant Governor could not assign to the  
5 Committee of the Whole?  
6 A. I am sorry. I need to think about that.  
7 Q. Sure. Please take your time.  
8 A. Probably not, I don't think so.  
9 Q. Besides the Committee of the Whole, can a  
10 Lieutenant Governor sit on any other committees in the  
11 Senate?  
12 A. He -- not under our rules, no.  
13 Q. Is it fair to say that the Lieutenant Governor  
14 has a more powerful role when a bill is referred to the  
15 Committee of the Whole as opposed to Lieutenant  
16 Governor's role with respect to a bill being considered  
17 by another committee?  
18 A. I don't think I would characterize it as "more  
19 powerful."  
20 Q. But you did say before that the Lieutenant  
21 Governor could vote on legislation in the Committee of  
22 the Whole; is that right?  
23 A. Yes.  
24 Q. And typically beyond, besides the Committee of  
25 the Whole, the Lieutenant Governor could only vote on

44

1 legislation if there was a tie in the Senate; is that  
2 right?  
3 A. That's right.  
4 Q. What rules govern the proceedings of the  
5 Committee of the Whole?  
6 A. Generally, there are rules in the Senate, I  
7 think, in Article XIII that generally govern the  
8 Committee of the Whole. We, also, have -- the Senate  
9 can determine rules for each sitting of the Committee of  
10 the Whole by resolution or in written format, however  
11 they choose to -- to do that. You have, you know,  
12 parliamentary law -- general parliamentary law and  
13 precedents would apply where applicable, as would Senate  
14 Rules.  
15 Q. Who writes the Senate Rules?  
16 A. The Senate.  
17 Q. Does a particular member usually draft the  
18 rules?  
19 A. No.  
20 Q. Is the Legislative Council involved in writing  
21 the Senate Rules?  
22 A. They are probably sometimes asked to assist.  
23 Q. And does the Senate have to vote to adopt the  
24 Senate rules?  
25 A. Well, yes, I think to -- if they are to adopt

<p style="text-align: center;">45</p> <p>1 rules, they have to vote.</p> <p>2 Q. And can you tell me, more specifically, who</p> <p>3 actually writes or drafts the rules?</p> <p>4 A. Who drafts the rules?</p> <p>5 Q. Uh-huh.</p> <p>6 A. I can -- I mean, generally, the Parliamentarian</p> <p>7 will draft -- will have -- will assist in drafting the</p> <p>8 rules resolution at the beginning of the session.</p> <p>9 Q. And then does the Senate vote to adopt the</p> <p>10 rules at the beginning of each Regular Session of the</p> <p>11 Senate?</p> <p>12 A. Usually, yes.</p> <p>13 Q. And when you say "usually," what would be the</p> <p>14 exceptions to that practice?</p> <p>15 A. Well, they don't always adopt new rules in</p> <p>16 special sessions. They may not adopt their permanent</p> <p>17 rules at the very beginning. Sometimes they may choose</p> <p>18 to adopt temporary rules and adopt permanent rules</p> <p>19 later. There is -- they have the prerogative to adopt</p> <p>20 the rules of procedure as they see fit.</p> <p>21 Q. Since you became Senate Parliamentarian in</p> <p>22 2004, what has your involvement been with respect to the</p> <p>23 drafting of Senate Rules?</p> <p>24 A. Since I became Parliamentarian.</p> <p>25 Q. Uh-huh.</p>	<p style="text-align: center;">47</p> <p>1 A. I don't think -- not really. We don't change</p> <p>2 our rules frequently, or we haven't lately.</p> <p>3 Q. You testified previously that, in order to</p> <p>4 suspend the Regular Order of Business and take a bill</p> <p>5 out of the regular order would normally require a vote</p> <p>6 of two-thirds of those senators present.</p> <p>7 A. And voting.</p> <p>8 Q. And voting. Is that right?</p> <p>9 A. Uh-huh. (Witness nodding head up and down.)</p> <p>10 Q. Are there any -- since you have been</p> <p>11 Parliamentarian, have there been any exceptions to that?</p> <p>12 And by "exceptions," I mean, have there been any</p> <p>13 instances in which the Senate was able to suspend the</p> <p>14 Regular Order of Business by something other than a</p> <p>15 two-thirds vote of members present and voting?</p> <p>16 A. No.</p> <p>17 Q. I would ask that this document be marked as</p> <p>18 League Exhibit 14, please.</p> <p>19 (Deposition Exhibit No. 14 marked.)</p> <p>20 Q. Ms. Davis, I am handing you what's been marked</p> <p>21 as League Exhibit 14. You obviously don't need to sit</p> <p>22 here and read the entire document but please feel free</p> <p>23 to take a few moments to familiarize yourself with what</p> <p>24 it is.</p> <p>25 Ms. Davis, have you had a few moments to</p>
<p style="text-align: center;">46</p> <p>1 A. You know, I usually work with the Senate in</p> <p>2 drafting a resolution for their consideration on the</p> <p>3 Senate Floor. I sometimes make recommendations on rules</p> <p>4 changes.</p> <p>5 Q. And is the majority vote of the Senate required</p> <p>6 in order to adopt the Senate Rules for a particular</p> <p>7 session?</p> <p>8 A. Yes. It would be by majority vote.</p> <p>9 Q. What types of rules changes have you</p> <p>10 recommended since you have become Parliamentarian?</p> <p>11 A. Sometimes we have to conform our rules with</p> <p>12 constitutional requirements. We had a change in the</p> <p>13 constitution a couple of sessions ago dealing with</p> <p>14 record votes so, at that point, I made a recommendation</p> <p>15 to the Senate on how to incorporate those requirements</p> <p>16 into our rules, because our rules were in conflict.</p> <p>17 Q. And what other recommendations, if any, have</p> <p>18 you made to change the Senate Rules?</p> <p>19 A. I believe last session, I felt like there was</p> <p>20 somewhat of a conflict on referral and introduction and</p> <p>21 how those terms were used. I made a recommendation to</p> <p>22 the members on that. Generally, I don't make many</p> <p>23 recommendations.</p> <p>24 Q. Do you recall any other recommendations to</p> <p>25 change the rules that you have made as Parliamentarian?</p>	<p style="text-align: center;">48</p> <p>1 look over the document?</p> <p>2 A. Yes.</p> <p>3 Q. And do you recognize what this document is?</p> <p>4 A. Yes.</p> <p>5 Q. And what is it, Ms. Davis?</p> <p>6 A. Senate Rules from the 81st Legislature 2009.</p> <p>7 Q. And if I could please turn your attention to</p> <p>8 Page 24. And particularly Rule 5.11. And in 5.11(a),</p> <p>9 it states that, "Any bill, resolution or any measure on</p> <p>10 any day may be made a special order for a future time of</p> <p>11 the session by an affirmative vote of two-thirds of the</p> <p>12 members present."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Is that the rule that you were describing when</p> <p>16 you said that the Senate could vote by two-thirds of the</p> <p>17 members present and voting to take a bill out of order?</p> <p>18 A. No.</p> <p>19 Q. Okay. What rule were you referring to?</p> <p>20 A. Probably 5.12. Actually, I take that back.</p> <p>21 Well, they would suspend 5.12 as</p> <p>22 prescribed by 5.13.</p> <p>23 Q. How does 5.13 differ from 5.11(a)?</p> <p>24 MR. FREDERICK: Objection, vague, but you</p> <p>25 may answer.</p>



49

1 A. 5.11 is the manner in which the Senate would  
2 create a special order. A special order is actually not  
3 part of the Regular Order of Business but is above the  
4 Regular Order of Business in precedence on the Senate's  
5 calendars.

6 Q. (By Mr. Harris) And when you say, "it is a  
7 special order is above in precedence," what do you mean?

8 A. Well, "special order" is a mechanism used to  
9 set certain time or precedent for a bill. So if a bill  
10 is set for special order, it comes out of the regular  
11 order and is put above the regular order.

12 Q. How does that differ from what we were talking  
13 about before, when you said that the Senate could  
14 suspend the Regular Order of Business by a two-thirds  
15 vote and take a bill out of order?

16 A. Well, I guess that's more of an instantaneous  
17 motion. In other words, that could be on their calendar  
18 and a member could move to take a bill up out of order.  
19 And a special order is typically used to designate --  
20 you know, for example, it could be, you know,  
21 Mr. President, I move to set, you know, Senate bill  
22 blank as a special order for Friday.

23 Q. What is the effect of making a bill a special  
24 order?

25 A. The effect is that, under the Senate's

50

1 calendar, special orders are considered before the  
2 Regular Order of Business, they are considered first.

3 Q. And do you see on Page 24 in Rule 5.11(d), it  
4 says that, "Notwithstanding Subsection (a) of this rule,  
5 which we just read before, a bill or resolution relating  
6 to voter identification requirements reported favorably  
7 from the Committee of the Whole Senate may be set as a  
8 special order for a time at least 24 hours after the  
9 motion is adopted by a majority of the members of the  
10 Senate."

11 Do you see that?

12 A. Yes.

13 Q. What do you understand Rule 5.11(d) to mean,  
14 based on the text here?

15 A. Well, I think, as you just read it, a bill with  
16 a subject of voter identification requirements reported  
17 from the Committee of the Whole could be set as a  
18 special order at least 24 hours ahead of time by  
19 majority vote of the members of the Senate.

20 Q. And so does that mean that by a majority of the  
21 vote of the Senate, a bill relating to voter  
22 identification requirements reported favorably from the  
23 Committee of the Whole could be considered immediately  
24 as opposed to being considered in the Regular Order of  
25 Business?

51

1 A. Not immediately.

2 Q. How could it be considered -- considered sooner  
3 than a bill that was required to proceed in the Regular  
4 Order of Business?

5 A. Yes. Unless you would suspend rules to take  
6 other bills out of order.

7 Q. What are the usual factors required to have a  
8 bill be considered as a special order?

9 A. Can you ask that again? I am sorry.

10 Q. Sure. Putting aside Subsection D, what are the  
11 factors that would normally go into whether or not a  
12 bill would be considered as a special order?

13 A. I think it is a matter of scheduling. So it is  
14 really up to the Senate to determine whether it would  
15 want to schedule the bill differently.

16 Q. Do you know why there was a rule in 2009  
17 allowing a bill relating to voter identification  
18 requirements reported favorably from the Committee of  
19 the Whole to be considered as a special order by a  
20 majority -- by a majority vote from members of the  
21 Senate?

22 MR. FREDERICK: I object on the grounds of  
23 legislative privilege and instruct you not to answer the  
24 question.

25 MR. HARRIS: Well, Mr. Frederick, at this

52

1 point, the question is just, does the witness know. If  
2 she does know, we could get into a privilege debate.  
3 But I think the question "do you know," would not  
4 require her to reveal anything, let alone anything of a  
5 legislative privilege.

6 MR. FREDERICK: If you want to ask a  
7 question again, I am -- I think I understand.

8 Q. (By Mr. Harris) Sure. At this point, I am  
9 just asking for a yes or no answer to the question of:  
10 Do you know why the Senate incorporated in its 2009  
11 rules, a rule allowing a bill, a resolution relating to  
12 voter identification requirements reported favorably  
13 from the Committee of the Whole to be set as a special  
14 order by a majority vote of the Senate?

15 MR. FREDERICK: I would caution you that  
16 the way the question is phrased seeks a question of  
17 whether or not you know, to the extent, you may answer.  
18 I would caution you not to reveal your thought process  
19 or any privileged matter relating to the actual reasons.

20 A. Yes.

21 Q. (By Mr. Harris) And what are the reasons that  
22 the Senate adopted this rule governing vote or  
23 identification requirements as part of the special order  
24 rule in 2009?

25 MR. FREDERICK: Object on the basis of

53

1 legislative privilege. To the extent that answering  
 2 this question would require you to reveal the thought  
 3 process or mental impressions of any member of the  
 4 Senate or any communications among members of the Senate  
 5 regarding this issue. However, to the extent that you  
 6 can answer this question without revealing privileged  
 7 communications or subjective motivations and thought  
 8 process, you may answer.  
 9 A. I think I will claim legislative privilege.  
 10 Q. (By Mr. Harris) Do you know of any reason,  
 11 based on the public record, why the Senate adopted this  
 12 Rule 5.11(d) under its 2009 rules?  
 13 A. Yes.  
 14 Q. And what is that reason?  
 15 A. I think they publicly stated, the author of the  
 16 rules resolution publicly stated his reasons during the  
 17 debate in 2009.  
 18 Q. And who was the author of the rules resolution  
 19 in 2009?  
 20 A. Senator Tommy Williams.  
 21 Q. And what reasons do you recall Senator Williams  
 22 giving for adopting this Rule 5.11(d)?  
 23 MR. FREDERICK: This is confined to the  
 24 public record.  
 25 Q. Yes.

54

1 MR. FREDERICK: You may answer.  
 2 A. I think, very generally, his reasons for the  
 3 rules change, is that the question?  
 4 Q. Yes.  
 5 A. Right? Were that, generally, he felt like  
 6 making a change in the rules would be a more  
 7 straightforward parliamentary way of passing the  
 8 legislation as opposed to, you know, parliamentary  
 9 tactics that might have previously been used.  
 10 Q. What parliamentary tactics was he referring to  
 11 or are you referring to?  
 12 A. I don't remember if he specifically said.  
 13 Q. Are you aware of any publicly known legislative  
 14 tactics that were used with respect to voter  
 15 identification bills prior to 2009?  
 16 A. Yes.  
 17 Q. What were those tactics?  
 18 A. I believe in 2007 and, you know, I think people  
 19 would refer to them as parliamentary tactics. But it's  
 20 fairly well-known that there was an attempt to suspend  
 21 the Regular Order of Business when they had the votes to  
 22 do so. And I -- you know, because the requirement to  
 23 suspend the Regular Order of Business is a two-thirds of  
 24 the members present and voting, that vote total or  
 25 requirement can change based on the members that are

55

1 present and voting. So I think there is an attempt to  
 2 in 2007, to do that when members were absent and the  
 3 vote total would have changed or the vote requirement  
 4 would have changed.  
 5 Q. And which members were absent that you were  
 6 referring to?  
 7 A. You know, I don't remember entirely. I  
 8 remember one of the members. But I think we probably  
 9 had more absences, and I don't remember exactly who.  
 10 Q. Who is it that you do you remember being absent  
 11 in 2007?  
 12 A. I remember Senator Uresti being absent.  
 13 Q. Do you recall the reason why Senator Uresti was  
 14 absent in 2007?  
 15 A. I don't remember whether he was excused or not  
 16 excused. I don't recall.  
 17 Q. So with respect to the vote to sus -- to make a  
 18 vote or identification bill a special order in 2007,  
 19 what was -- what was the result of that vote?  
 20 A. The result of the vote. I don't remember the  
 21 actual result.  
 22 Q. Do you remember if a voter ID bill was, in  
 23 fact, made a special order in 2007?  
 24 A. The question is whether a vote other ID was  
 25 made a special order in 2007.

56

1 Q. Yes.  
 2 A. No.  
 3 Q. Your answer is, is that it was not made a  
 4 special order in 2007.  
 5 A. In 2007, that's right, no, it was not made a  
 6 special order.  
 7 Q. Apart from 5.11(d) in the 2009 rules that we  
 8 have just been looking at, are you familiar with any  
 9 other time in which the Senate rules carved out a  
 10 particular type of legislation from the two-thirds  
 11 requirement to make a bill a special order?  
 12 A. Can you ask your question again, please?  
 13 Q. Sure. If fact, I would ask the court reporter  
 14 read it back, please.  
 15 (Last question read back.)  
 16 A. Yes, I am familiar.  
 17 Q. What is your familiarity with that?  
 18 A. It was done in 1981.  
 19 Q. And what type of legislation -- well, tell me  
 20 what you remember -- well, I take it in 1981, you were  
 21 not the Parliamentarian; is that right?  
 22 A. That's correct.  
 23 Q. What rule in the 1981 Senate Rules are you  
 24 referring to?  
 25 A. I don't remember the specific rule.

<p style="text-align: center;">57</p> <p>1 Q. Do you remember what the substance or effect of</p> <p>2 the rule was?</p> <p>3 A. Generally, the language was similar to this</p> <p>4 language, 5.11(d) in that a bill, a particular type of</p> <p>5 bill could be made a special order if it had been</p> <p>6 reported from the Committee of the Whole. And I think</p> <p>7 similar language for at least 24 hours after the motion</p> <p>8 is adopted by majority of the Senate.</p> <p>9 Q. And what type of legislation did the 1981 rule</p> <p>10 that you have been talking about refer to?</p> <p>11 A. I don't remember their exact phrasing. I</p> <p>12 believe it was related to apportionment. But I don't</p> <p>13 remember the exact phrasing.</p> <p>14 Q. Other than 5.11(d) concerning voter</p> <p>15 identification requirements and the 1981 rule that you</p> <p>16 have talked about relating to apportionment, are you</p> <p>17 aware of any other times when the Senate Rules have</p> <p>18 allowed a particular type of bill to be set as a special</p> <p>19 order by a vote of the majority of the members of the</p> <p>20 Senate?</p> <p>21 A. I can't say it has never happened. I don't</p> <p>22 recall it happening in recent times.</p> <p>23 Q. Since you weren't in the Senate in 1981, how is</p> <p>24 it that you're familiar with that rule that you were</p> <p>25 referring to before?</p>	<p style="text-align: center;">59</p> <p>1 history. I am generally familiar with the rules over</p> <p>2 the course of the Senate's history but that doesn't mean</p> <p>3 I have performed an exhaustive analysis of whether that</p> <p>4 particular change in the way Senate special orders are</p> <p>5 made.</p> <p>6 Q. (By Mr. Harris) But sitting here today, based</p> <p>7 on your familiarity with the Senate Rules over -- what</p> <p>8 teams to be at least a good period of time going back to</p> <p>9 at least 1981, the only instances you can think of in</p> <p>10 which there was an exception for a particular type of</p> <p>11 legislation, with respect to making that type of</p> <p>12 legislation a special order, was the 1981 example of</p> <p>13 apportionment and this 2009 rule dealing with voter ID;</p> <p>14 is that right?</p> <p>15 A. I think that's an accurate decipher of that</p> <p>16 time period, yes.</p> <p>17 Q. Did Lieutenant Governor play any role in</p> <p>18 creating this Rule 5.11(d) in 2009?</p> <p>19 MR. FREDERICK: I am going to object on</p> <p>20 the basis of privilege. You may answer the specific</p> <p>21 question whether or not he played a specific role. But</p> <p>22 I caution you not to go beyond that into any privileged</p> <p>23 communications or privileged matters.</p> <p>24 A. With regard -- well, as Presiding Officer, he</p> <p>25 would always be somewhat involved in the rules of the</p>
<p style="text-align: center;">58</p> <p>1 A. Parliamentary research.</p> <p>2 Q. And would that research -- if I wanted to find</p> <p>3 out all the times that the Senate, let's say, in the</p> <p>4 last 50 years has created a special rule for a</p> <p>5 particular type of legislation, with respect to making</p> <p>6 that type of legislation a special order, would I just</p> <p>7 go back and read all the Senate rules for that time</p> <p>8 period or is there -- do you know of a more efficient</p> <p>9 way to answer that question?</p> <p>10 A. Well, that's the most exact way to answer the</p> <p>11 question. You -- depending on the resources available,</p> <p>12 you could research -- you could look through rules</p> <p>13 resolutions, you know, for earlier times in the Senate,</p> <p>14 they are not always compiled and easy to search for, so</p> <p>15 we often do have to look at the rules or the journals.</p> <p>16 Q. What sort of research did you do to look into</p> <p>17 the question of whether the Senate had previously</p> <p>18 created an exception for a particular type of</p> <p>19 legislation with respect to making that type of</p> <p>20 legislation a special order?</p> <p>21 A. Well --</p> <p>22 MR. FREDERICK: I am going to object as</p> <p>23 vague. I mean, you may answer.</p> <p>24 A. I am not sure. That's why my answer earlier</p> <p>25 was a bit tentative in the earlier parts of the Senate</p>	<p style="text-align: center;">60</p> <p>1 Senate.</p> <p>2 Q. (By Mr. Harris) As a general matter, now</p> <p>3 putting aside 5.11(d), what is the Lieutenant Governor's</p> <p>4 role with respect to the rules adopted by the Senate?</p> <p>5 A. Well, his role in a parliamentary sense is that</p> <p>6 he is the Presiding Officer, so he would likely be aware</p> <p>7 of the Senate's work on the rules.</p> <p>8 Q. Did you have any discussions with the</p> <p>9 Lieutenant Governor regarding the proposed Rule 5.11(d)</p> <p>10 prior to the time that it was voted on by the Senate?</p> <p>11 A. Yes.</p> <p>12 Q. Did you have any discussions with Senator</p> <p>13 Williams -- well, let me ask you this. Go back for a</p> <p>14 second.</p> <p>15 How many times did you discuss the</p> <p>16 proposed Rule 5.11(d) with the Lieutenant Governor</p> <p>17 before the Senate voted on it?</p> <p>18 A. I don't remember.</p> <p>19 Q. When the Senate is in session, how frequently</p> <p>20 do you communicate or interact with the Lieutenant</p> <p>21 Governor?</p> <p>22 A. Interact, daily when we are in session.</p> <p>23 Q. And with respect to your discussions with the</p> <p>24 Lieutenant Governor, with respect to the proposed Rule</p> <p>25 5.11(d), do you recall whether you had more than one</p>

65

1 up on the break and consult the Court's orders.  
 2 MR. FREDERICK: And that's fine.  
 3 MS. BERKOWER: Don't you want to go off  
 4 the record?  
 5 MR. HARRIS: Let's actually go off the  
 6 record for a minute, please.  
 7 (Brief recess.)  
 8 Q. (By Mr. Harris) We have, obviously, had some  
 9 discussions off the record with respect to what sorts of  
 10 questions you can answer with respect to discussions  
 11 about 5.11(d) with other members. And I think it will  
 12 take a little time to straighten that out, so we can  
 13 re-visit it a little later today.  
 14 But I would ask that, without revealing  
 15 the substance of any discussion with a particular  
 16 member, how is it that you came to discuss Rule 5.11(d)  
 17 with the members of the Senate? What were the  
 18 circumstances under which you had those discussions?  
 19 A. "The circumstances," what do you mean?  
 20 Q. Do you regularly have meetings with all the  
 21 members of the Senate?  
 22 A. As the Parliamentarian, I have lots of  
 23 day-to-day contact with the members during a session and  
 24 lots of meetings and discussions.  
 25 Q. And how do you, typically, communicate with

66

1 members, is it over the phone? Do they come up to you  
 2 on the Senate Floor? How does that work?  
 3 A. Most of the time, probably on the Senate Floor,  
 4 in person it could be a meeting, sometimes on the phone.  
 5 Q. And following the adoption of Rule 5.11(d), in  
 6 the 2009 Senate Session, did the 2011 Senate Rules for  
 7 the next Regular Session of the Senate contain a similar  
 8 rule to Rule 5.11(d)?  
 9 A. Yes.  
 10 Q. I would ask that this document be marked for  
 11 identification as League Exhibit 15.  
 12 (Deposition Exhibit No. 15 marked.)  
 13 A. Thank you.  
 14 Q. Ms. Davis, I have handed you an excerpt of a  
 15 longer document, it should have the -- if everything  
 16 went right, it should have the cover page and Pages 24  
 17 and 25, is that what you have as well?  
 18 A. Yes.  
 19 Q. And do you recognize what this excerpted  
 20 document is?  
 21 A. I assume it is the section in the Senate Rules  
 22 from 2011 dealing with special orders.  
 23 Q. And do you see that on Page 24, there is a rule  
 24 set out under Rule 5.11(a) that says that, "Any bill,  
 25 resolution, or other measure may on any day be made a

67

1 special order for future time of the session by an  
 2 affirmatively vote of two-thirds of the members  
 3 present."  
 4 Do you see that rule?  
 5 A. Yes.  
 6 Q. And then in Rule 5.11(d) of the 2011 Senate  
 7 Rules, it says that, "Notwithstanding Subsection (a) of  
 8 this rule, a bill or resolution relating to voter  
 9 identification requirements reported favorably from the  
 10 Committee of the Whole Senate may be set as a special  
 11 order for a time at least 24 hours after the motion is  
 12 adopted by a majority of the members of the Senate."  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. And that -- would you agree that that rule is  
 16 substantively similar to the -- to Rule 5.11(d) that we  
 17 looked at under the 2009 rules?  
 18 A. Yes.  
 19 Q. And what is your understanding of the effect or  
 20 the meaning, confining your answer to the text that we  
 21 have before us here, of this Rule 5.11(d) under the 2011  
 22 rules?  
 23 A. I would say, it is the same as 2009.  
 24 Q. And so would you agree that the effect of this  
 25 rule is that, a bill or resolution relating to voter ID,

68

1 that passed through the Committee of the Whole Senate  
 2 could be considered out of the Regular Order of Business  
 3 and could, in fact, be considered as soon as 24 hours  
 4 after the motion is adopted by a majority of the members  
 5 of the Senate?  
 6 A. I think the rule says that it may be set as a  
 7 special order for a time at least 24 hours after the  
 8 motion is adopted by majority of the members of the  
 9 Senate.  
 10 Q. Do you know why this Rule 5.11(d) was included  
 11 in the 2011 Senate rules?  
 12 MR. FREDERICK: I will object to the  
 13 extent that this calls for any privileged communications  
 14 or privileged mental impressions or thought process.  
 15 The specific question as to whether or not  
 16 you know, however, you may answer.  
 17 A. Yes.  
 18 Q. (By Mr. Harris) Are you aware of any publicly  
 19 stated reasons or publicly known reasons why the Senate  
 20 included Rule 5.11(d) in the 2011 rules?  
 21 A. Uhm. Publicly stated -- you know, I don't  
 22 recall the public debate on these rules very well.  
 23 Q. Who drafted the 2011 Senate rules?  
 24 A. I would have drafted the resolution adopting  
 25 the rules.

73

1 proposed Rule 5.11(d) under the 2009 rules with certain  
2 members who are opposed to the voter identification  
3 bills being considered at that time; is that right?

4 A. Yes.

5 Q. Which members of the Senate did you -- that  
6 were in opposition to voter identification laws did you  
7 discuss the proposed Rule 5.11(d) with in 2009?

8 A. In 2009?

9 Q. Uh-huh.

10 A. You know, probably all of them at one point or  
11 another. Again, I have lots of discussions with the  
12 members as the Parliamentarian, discussions regarding  
13 rules of procedure are frequent in my job, they happen  
14 daily, they happen often, so it is a safe bet to say, I  
15 have discussed this rule and the rules with all of the  
16 members of the Senate at one time or another of during  
17 2009 and 2011 and sometimes I remember a meeting  
18 happening and frequently I do not, there are multiple  
19 discussions.

20 MR. HARRIS: Can we go off the record for  
21 just a moment.

22 (Brief pause.)

23 Q. (By Mr. Harris) So Ms. Davis, we went off the  
24 record and your counsel, Mr. Frederick, and I discussed  
25 those members of the Senate that you may be permitted to

75

1 the privilege belongs to each member individually, many  
2 of these members are represented by separate counsel.  
3 And our understanding of privilege is that -- and that  
4 waiver, specifically, is that waiver is an intentional  
5 relinquishment of a known right. So as -- as counsel  
6 for the State, you know, I am not in a position to  
7 affect a waiver or, potentially, waive the privilege of  
8 a member who has not clearly stated their intention to  
9 waive. So I think that's consistent with what you said,  
10 but I just want to make it clear for the record.

11 MR. HARRIS: I think that's right.

12 And Mr. Frederick, are you able to provide  
13 me or your client with a list of those members of the  
14 Senate who have affirmatively invoked privilege in this  
15 case?

16 MR. FREDERICK: You know, I can't right  
17 now.

18 MR. HARRIS: Okay. Well, subject to  
19 resolving some of the legal issues around that, let's  
20 proceed with the deposition as, I know, your time is  
21 valuable, Ms. Davis.

22 Q. (By Mr. Harris) Did you have any discussions  
23 in 2009 with Senator Rodney Ellis regarding Rule 5.11(d)  
24 of the Senate Rules?

25 A. I may have.

74

1 describe communications with, with respect to border  
2 identification legislation.

3 For the record, and Mr. Frederick, please  
4 correct me if I am wrong. Mr. Frederick will allow me  
5 to question you about communications with Senator Ellis,  
6 as Senator Ellis, I think everyone agrees has  
7 affirmatively waived his right to privilege -- his  
8 legislative privilege in this case. But the State's  
9 position is that a member of the Senate must have  
10 affirmatively waived privilege in order to overcome any  
11 legislative privilege.

12 Do I understand that correctly,  
13 Mr. Frederick?

14 MR. FREDERICK: I think, generally, yes.

15 And let me just say for the record: The  
16 State does acknowledge that in the May 11th, 2012,  
17 letter, Senator Ellis has clearly stated his intent,  
18 based upon the advice of counsel, that he intends to  
19 waive any and all privileges that would apply in this  
20 case. We recognize that and accept it. And on that  
21 basis, I will not prevent the witness from answering any  
22 questions that would require her to reveal matters  
23 within Senator Ellis's privilege.

24 With respect to other members who have not  
25 waived their privilege, the State's position is that,

76

1 Q. Do you --

2 A. I don't recall any specific conversations.

3 Q. Do you recall what Senator Ellis's position was  
4 with respect to the Rule 5.11(d) under the Senate rules?

5 A. I recall from the public debate that he was  
6 opposed to that provision.

7 Q. How about in 2011, did you have any discussions  
8 with Senator Ellis in 2011 regarding the Rule 5.11(d) of  
9 the Senate Rules?

10 A. I don't recall any specific one-on-one  
11 conversations with Senator Ellis.

12 Q. Do you recall what Senator Ellis's position was  
13 with respect to the Rule 5.11(d)?

14 A. No. I think I recall -- I recall that his vote  
15 was "no" on the motion to adopt the rules.

16 Q. Are you familiar with the procedure by which  
17 the Governor of Texas may declare a particular type of  
18 legislation to be an emergency or an emergency item?

19 A. Yes.

20 Q. What does it mean for the Governor of Texas to  
21 declare a particular piece of legislation as an  
22 emergency?

23 A. I can only speak to the parliamentary effects.

24 Q. Please do.

25 A. Of that decision.



77

1 Q. Please do.

2 A. The Texas Legislature has a -- what we refer to  
3 as "a constitutional order of business" that provides  
4 for the flow of legislation during a Regular Session.

5 The constitutional order of business,  
6 essentially, is sort of accumulative list of actions  
7 that the Legislature may take throughout that 140 days.

8 What the constitutional order of business  
9 says, is that the first 30 days is for the introduction  
10 of bills, I think the consideration of gubernatorial  
11 appointments. I don't have it in front of me, but  
12 that's generally the case. Then the next 30 days would  
13 be for committees to meet and consider. So this is a  
14 list that's cumulative and gives more and more authority  
15 to the Legislature for the consideration of bills and  
16 resolutions.

17 Constitutional order of business  
18 prescribes that the Governor may declare certain items,  
19 bills, subjects, I am not exactly sure how it is  
20 phrased, it is not before me, that he may -- he or she  
21 may declare those in emergency. And when an emergency  
22 declaration is made, essentially, the limitations within  
23 the constitutional order of business would not apply to  
24 those subjects.

25 Q. Does that mean that a bill that is declared to

78

1 be an emergency by the Governor may be considered sooner  
2 than it would otherwise?

3 A. Sooner in the legislative session, in a Regular  
4 Session.

5 Q. Correct.

6 A. Yes.

7 Q. And are you able to quantify how much sooner  
8 once -- I guess to clarify. Once the Governor declares  
9 an item or a bill to be a legislative emergency, what is  
10 the effect on the timing of the consideration of that  
11 bill in the Senate?

12 A. The effect is, insofar as committees may meet  
13 to consider items, that a committee could meet within  
14 the first 30 days. Whereas, the constitutional order of  
15 business would prevent that without a four-fifths vote  
16 of the membership of the body.

17 The second effect is for actual  
18 consideration on the Senate Floor, the constitutional  
19 order of business only allows consideration of bills  
20 within the first 60 days on the floor without the Senate  
21 itself suspending the constitutional order of business  
22 with a four-fifths vote.

23 Q. During your time as Senate Parliamentarian, do  
24 you recall particular bills being introduced to alter  
25 the requirements for a voter in terms of identification?

79

1 Let me rephrase that. It wasn't too clear.

2 Do you recall particular bills being  
3 introduced that alter the forms of identification  
4 required to vote in Texas?

5 A. Particular bills. This is during my time as  
6 Parliamentarian?

7 Q. Yes.

8 A. Okay. Yes.

9 Q. In which session do you first recall such a  
10 bill being introduced?

11 A. Probably, particularly and specifically, maybe  
12 that bills were introduced and I just don't remember. I  
13 roughly remember 2011, 2009, 2000 -- actually, was your  
14 question introduced in the Senate or in the Legislature?

15 Q. I don't exactly remember what the question was,  
16 but let's make it the entire Legislature.

17 A. Definitely in 2007. And then I don't really  
18 recall in 2005 whether there were or there weren't.

19 (Exhibit 44 previously marked.)

20 Q. Okay. This document has previously been marked  
21 as DOJ Exhibit 44.

22 Ms. Davis, I am handing you what's  
23 previously been marked in another deposition as  
24 Department of Justice Exhibit 44. Please take a few  
25 moments to look over the document.

80

1 A. Can I -- how thoroughly do you want me to  
2 review this?

3 Q. I don't think it will be necessary for you to  
4 review it too thoroughly at all.

5 A. Thank you.

6 Q. Does this appear to be a copy of a House Bill  
7 No. 1706?

8 A. Yes.

9 Q. Are you able to tell, looking at this Bill, in  
10 which session it was considered, which legislative  
11 session, I mean?

12 A. I would guess that it was the 2005 Legislative  
13 Session, based on its effective clause at the end of the  
14 Bill.

15 (League Exhibit No. 4 previously marked.)

16 Q. This document has previously been marked as  
17 League Exhibit 4.

18 And Ms. Davis, the court reporter has  
19 handed you what's been marked in a previous deposition  
20 as League Exhibit 4. If you can take a few moments to  
21 look over this document and familiarize yourself with  
22 it.

23 A. Okay.

24 Q. Ms. Davis, am I correct that this appears to be  
25 a legislative history for HB 1706, the Bill that we were



<p style="text-align: center;">81</p> <p>1 just looking at a moment ago?</p> <p>2 A. Yes.</p> <p>3 Q. And, according to the title of the Bill and as</p> <p>4 well as its legislative history, HB 1706 was from the</p> <p>5 79th Session of the Legislature; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And that -- that Legislative Session would have</p> <p>8 occurred in the first half of 2005; is that right?</p> <p>9 A. Yes. Regular Session.</p> <p>10 Q. And HB 1706, according to its title and as well</p> <p>11 as the legislative history, relates to requiring a voter</p> <p>12 to present proof of identification; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And are you able to tell from this legislative</p> <p>15 history what the -- what the ultimate disposition of</p> <p>16 this -- of this Bill HB 1706 was, first, I will ask you,</p> <p>17 with respect to the House?</p> <p>18 A. Appears to have passed the House of</p> <p>19 Representatives.</p> <p>20 Q. And is -- are you able to tell that from the</p> <p>21 entry that says, it says, "H," and then "Reported</p> <p>22 engrossed on May 4th, 2005."</p> <p>23 A. Yes.</p> <p>24 Q. What does it mean for a bill to be reported</p> <p>25 engrossed?</p>	<p style="text-align: center;">83</p> <p>1 Representatives, the message would be a formal message</p> <p>2 to the Senate containing, you know, action items or, you</p> <p>3 know, information from the House has to what it's</p> <p>4 passed, what it is sending over. So it would -- in this</p> <p>5 case, we would have received a message saying that the</p> <p>6 House is finally passed, you know, it was probably with</p> <p>7 other -- a lot of other bills but it would have included</p> <p>8 in bill and a list of bills that would have been passed</p> <p>9 within the actual message and then the bills and the</p> <p>10 engrossed version that I formally mentioned would be</p> <p>11 attached to that message.</p> <p>12 Q. And then it looks like on May 5th, 2005, the</p> <p>13 Bill was read for the first time in the Senate; is that</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. And that's what you were referring to earlier</p> <p>17 when you said that, a bill received from the House would</p> <p>18 be read before the entire Senate on the floor; is that</p> <p>19 right?</p> <p>20 A. Yes. The Constitution requires three readings,</p> <p>21 and then the Senate, we consider the first reading at</p> <p>22 time of referral.</p> <p>23 Q. And then I see on that same day, May 5th, 2005,</p> <p>24 there is an entry on the Senate side that says,</p> <p>25 "referred to State Affairs."</p>
<p style="text-align: center;">82</p> <p>1 A. Oh, boy. An engrossment is: "Reported</p> <p>2 engrossed," in this particular context, what it would</p> <p>3 mean is that the bill had passed the House of</p> <p>4 Representatives on final passage. And an engrossment is</p> <p>5 a term that we use for the -- for a bill that passes the</p> <p>6 first House, the originating chamber. And then</p> <p>7 engrossment takes the bill that is passed by that body</p> <p>8 and makes all of the changes to it that were adopted.</p> <p>9 You could have a committee substitute that comes out and</p> <p>10 that's heavily amended on the House floor. The</p> <p>11 engrossment actually puts the bill -- rather than just</p> <p>12 putting amendments on top of a committee substitute and</p> <p>13 sending them to the Senate, they would actually engross</p> <p>14 the bill, put it in final form as adopted by the House</p> <p>15 of Representatives, and that would be the action of</p> <p>16 engrossment and then that's reported, and that is the</p> <p>17 actual document that the Senate would receive from the</p> <p>18 House.</p> <p>19 Q. And I see that on that same day, May 4th, 2005,</p> <p>20 there is an entry that appears to refer to the Senate,</p> <p>21 but says that, HB 1706 was received from the House.</p> <p>22 Does that have any particular meaning, the</p> <p>23 fact that the bill was received from the House?</p> <p>24 A. Yes. The significance of that is that, the</p> <p>25 Senate would have received a message from the House of</p>	<p style="text-align: center;">84</p> <p>1 Do you understand that to mean the -- the</p> <p>2 Senate Committee on State Affairs?</p> <p>3 A. Yes.</p> <p>4 Q. What is the subject matter that -- that is</p> <p>5 covered by the Senate Committee on State Affairs?</p> <p>6 A. Well, the State Affairs Committee has a fairly</p> <p>7 large jurisdiction. I think I tend to think of it as --</p> <p>8 it has specific subjects that are frequently referred</p> <p>9 to, and then kind of history of State Affairs is that it</p> <p>10 tends to, also, get miscellaneous bills sometimes. It</p> <p>11 is a larger committee, so sometimes it receives bills of</p> <p>12 jurisdictions from other committees. But generally, its</p> <p>13 jurisdiction would be -- let me think, you know, it</p> <p>14 would have certain bills dealing with civil</p> <p>15 jurisprudence, healthcare insurance, elections. I think</p> <p>16 it would receive bills -- sometimes we tend to send</p> <p>17 bills that deal with matters related to the Attorney</p> <p>18 General's Office, we typically would refer there.</p> <p>19 Sometimes bills dealing with general state government</p> <p>20 and the, you know, could be, like, the computer systems</p> <p>21 and computer policies of general government, it really</p> <p>22 receives a kind of a -- it is quite a catchall</p> <p>23 committee.</p> <p>24 Q. I see. You said that the State Affairs</p> <p>25 Committee covers the topic of elections.</p>

85

1 Do any other standing committees have  
2 jurisdiction over election law in Texas on the Senate  
3 side?  
4 A. You know, they could. I mean, the -- you know,  
5 we don't have jurisdiction spelled out in our rules so,  
6 you know, you could have another committee that might be  
7 able to handle elections. But generally speaking,  
8 recent history, the State Affairs Committee is  
9 considered to have the expertise in elections issues.

10 Q. And then I see here that the -- the entry we  
11 just talked about from May 5th, 2005, on the Senate  
12 side, in which the bill was referred to the State  
13 Affairs Committee, is actually the last -- the last  
14 entry on this legislative history that we are looking  
15 at. Are you able to tell what happened to the Bill  
16 after it went to the State Affairs Committee?

17 A. Well, I can tell that it appears that nothing  
18 else happened from a parliamentary sense.

19 Q. So I take that to mean that the Bill did not  
20 pass out of the State Affairs Committee?

21 A. Based on what you have put before me, no.

22 Q. And I will, for whatever it is worth, I will  
23 represent to you that I printed out a complete  
24 legislative history from the Legislative Reference  
25 Library of Texas. In fact, do you know what the

87

1 have been, I don't remember them.

2 (Exhibit No. 6 previously marked.)

3 Q. This document has previously been marked as  
4 League Exhibit 6.

5 And Ms. Davis, please take a few moments  
6 to familiarize yourself with the document. But as  
7 before, I don't think it will be necessary for you to  
8 read through the entire thing but rather just make sure  
9 you know what it is.

10 (League Exhibit No. 6 previously marked.)

11 A. Yes, I do. And actually, if your recent  
12 question was 2007 --

13 Q. Yes.

14 A. I think I understood -- I misunderstood you. I  
15 think was thinking 2009.

16 Q. I see.

17 A. So I apologize for that. I don't really  
18 remember what any particular -- I don't specifically  
19 remember what may or may not have been introduced in the  
20 Senate at that time.

21 Q. No problem. Thank you for clarifying. It is  
22 actually a good time to remind you that, if you do  
23 determine throughout today that you want to correct  
24 something from earlier or you remember something earlier  
25 that you didn't remember at the time I asked you, you

86

1 Legislative Reference Library of Texas is?

2 A. Yes.

3 Q. What is it?

4 A. I am not sure I can do justice to -- to what it  
5 is. But it is our -- it is a -- the library has many  
6 functions. It contains -- it contains lots of volumes  
7 of journals and reference material for the legislative  
8 process that many users utilize on a day-to-day basis.

9 It, also, you know, in frequent cases --  
10 well, I guess, primarily, it reports on -- within our  
11 computer system, the actions that the Legislature takes  
12 on a daily basis.

13 Q. And is the Legislative Reference Library of  
14 Texas, isn't it an agency of the State of Texas or is it  
15 a private organization?

16 A. It is an agency of the Legislature.

17 Q. I see. And I think you testified earlier that  
18 you recall bills concerning voter identification  
19 requirements in Texas being introduced in 2009 and 2011.  
20 We just looked at one such bill from 2005.

21 Do you remember any voter identification  
22 related laws being introduced in the 2007 Regular  
23 Session of the Senate?

24 A. In 2007, yes, I remember the bill introduced by  
25 Senator Fraser. If there were others, and there may

88

1 should absolutely feel free to interject and I  
2 appreciate that.

3 A. Great. Thank you.

4 Q. I would ask that this document be marked for  
5 identification as League Exhibit 16.

6 (Deposition Exhibit No. 16 marked.)

7 Q. And Ms. Davis, please take a few moments to  
8 look over this document. I would offer you an apology  
9 that the text is so small. I don't know why this one  
10 printed out like this, but hopefully it is legible.

11 A. Okay.

12 Q. Ms. Davis, have you had a sufficient  
13 opportunity to look over this Document 16?

14 A. Yes.

15 Q. And this appears to be another legislative  
16 history, this one for HB 218, the Bill we were just  
17 looking at a moment ago.

18 Do you agree with that?

19 A. Yes.

20 Q. And HB 218 was from the 80th Regular Session of  
21 the Legislature; is that right?

22 A. Yes.

23 Q. And that session of the Legislature met during  
24 the first half of 2007; is that right?

25 A. Yes.

89

1 Q. And according to the -- to the title of the  
2 Bill 218 that we just looked at, as well as what's  
3 referenced here in the legislative history, do you agree  
4 that HB 218 was a bill relating to requiring a voter to  
5 present proof of identification?

6 A. Yes.

7 Q. And looking at this legislative history,  
8 Exhibit 16, are you able to tell what the disposition of  
9 the Bill was in the -- on the House side, first?

10 A. Yes.

11 Q. And what was the disposition of this HB 218 on  
12 the House side?

13 A. It was finally passed, engrossed, and sent to  
14 the Senate.

15 Q. And am I reading this correctly, that the Bill  
16 was reported engrossed from the house on April 24th,  
17 2007?

18 A. Yes.

19 Q. And then it looks like on April 25th, it was  
20 received from the House by the Senate; is that right?

21 A. Yes.

22 Q. And it looks like it was read on the Senate  
23 floor the next day, April 26, 2007?

24 A. Yes.

25 Q. And there is an entry on 4-26-2006, it says,

90

1 "Refer to State Affairs." And I guess the comment at  
2 the left has an "S" indicating this is relating to the  
3 Senate Chamber.

4 Do you understand that entry to mean that  
5 HB 218 was referred to the State Affairs Committee on  
6 the Senate side?

7 A. Yes.

8 Q. Were you at all involved in the decision to  
9 refer HB 218 to the State Affairs Committee in 2007?

10 A. Probably. I don't specifically recall it.

11 Q. And are you able to tell from this legislative  
12 history what happened to HB 218 once it was referred to  
13 the Committee on State Affairs? I guess, at this point,  
14 I confine your answer to what happened in the Bill in  
15 committee.

16 A. Based on the actions on the list that you have  
17 put in front of me, the Bill would have been heard in  
18 committee, had -- had a public hearing, you know,  
19 witnesses would have had the opportunity to testify. It  
20 appears that there was a substitute for the Bill. And  
21 based on what's before me, we can't determine much more  
22 than that. They would have substituted the Bill and  
23 reported it favorably to the Senate.

24 Q. When you say "the Bill was substituted," what  
25 does that mean?

91

1 A. What it means is that: When committees make  
2 recommendations to the full Senate, they -- they can --  
3 there is really three ways that they can report a bill  
4 favorably. They can, basically, recommend a bill as  
5 introduced or received from the House with no changes.  
6 They can recommend a bill with changes by amendment,  
7 where they would make specific amendment  
8 recommendations. And then they can, also, make a  
9 recommendation based on a substitute.

10 And what a "substitute" is, is basically a  
11 new document, if you will, that may be very similar to  
12 the original bill, it may have substantive changes, it  
13 may have minor changes, but for parliamentary purposes  
14 it is a new document for consideration. And so when it  
15 becomes before the Senate, that document would be  
16 considered in lieu of the original bill.

17 Q. And so the fact that the Committee on State  
18 Affairs reported favorably -- reported the bill  
19 favorably as substituted, does that mean that the  
20 substitute version of the Bill passed out of the State  
21 Affairs Committee?

22 A. I guess you could say that. The substitute is,  
23 at that point, the recommendation to the full Senate.

24 Q. And I think you said earlier that, in order to  
25 recommend a bill to the full Senate would typically

92

1 require a majority vote of the committee members.

2 A. Yes.

3 Q. And then I see that on May 1st, it says that,  
4 "a committee report was sent and distributed." What's a  
5 "committee report"?

6 A. A "committee report" is, basically, a report on  
7 the action of the committee. So on this type of bill,  
8 there would be a report on the front indicating to the  
9 Senate the action that the committee took on the bill.  
10 It would indicate what day the action was taken. It  
11 would indicate the vote on the bill. I think it  
12 indicates what form of recommendation, you know, whether  
13 it's a favorable recommendation, an unfavorable  
14 recommendation, also, the particular form of the  
15 recommendation, as I stated earlier, whether as  
16 introduced or received, amended or form substitute.

17 The committee report itself would, also,  
18 include a fiscal analysis, what we call "a fiscal" that  
19 is required by the rules, if -- if it is required,  
20 doesn't always. Also, a bill analysis, if required.  
21 And if any witnesses testified, that would be included  
22 and attached to the committee report and then, also, the  
23 actual recommendation in its form, either the substitute  
24 or amendments, or just the bill.

25 Q. You referred to a fiscal note. What's a

93

1 "fiscal note"?

2 A. Oh, boy. A "fiscal note" is an analysis of the  
3 fiscal implications of a bill to the State that is  
4 performed by the Legislative Budget Board, it is  
5 advisory. And if it is required for a particular bill,  
6 it is attached to the bill.

7 Q. When is a fiscal note required?

8 A. You know, I may have to refer to the bills on  
9 that. But for -- I would say, in general, for most  
10 bills.

11 Q. Well, what determines whether a fiscal note is  
12 required?

13 A. We would look to the rules.

14 Q. And you --

15 A. And substance of the bill. You know, for  
16 example, I think the budget doesn't require a fiscal  
17 note so that's the only reason why I would say it is not  
18 required on all of them, not the only reason but it is  
19 just not always necessary for the body.

20 Q. I see. And you referred to the Legislative  
21 Budget Board. What's that?

22 A. The Legislative Budget Board is an agency of  
23 the Legislature that's created in statute. And it is  
24 the Legislature's main resource for budgetary  
25 information, as an agency with employees but, also, it

94

1 is governed by the leadership of the Legislature and  
2 members from the House and the Senate.

3 Q. Who appoints the members -- well, how does one  
4 become a member of the Legislative Budget Board?

5 A. I don't have the statute before me. But my  
6 recollection is accurate and let's hope it is. The  
7 Lieutenant Governor is a member, the Speaker of the  
8 House is a member. I am going to say that there is a  
9 total of five representatives, if you will, from each  
10 chamber of the House and the Senate and that's  
11 probably -- that's including the Lieutenant Governor and  
12 the Speaker. I think that some of the positions on the  
13 Legislative Board are, for example, I think it is  
14 standard that the Chair of Senate Finance is  
15 automatically on the Legislative Budget Board. And I  
16 think that the Lieutenant Governor makes the other  
17 appointments for the Senate.

18 Q. Going back to the bill history of HB 218 that  
19 we were looking at. I see an entry that says that, on  
20 May 2nd, 2007, the Bill was placed on the Intent  
21 Calendar. What's the "Intent Calendar"?

22 A. You're looking at of May 2nd.

23 The "Intent Calendar" is a calendar used  
24 during a Regular Session of the Senate, of the  
25 Legislature and it is used by a Senate, it is only in

95

1 the Senate. It is a calendar required by the rules for  
2 the members to give notice to the Senate of their  
3 intention to suspend the Regular Order of Business to  
4 take a bill up out of order if that -- if that is what  
5 their intention is and if that is what they are going to  
6 do.

7 Q. And would it be correct that, at least during  
8 the 80th Session, Regular Session in 2007, that to  
9 consider HB 218 out of order would have required a  
10 vote -- excuse me, a two-thirds vote of those senators  
11 present and voting?

12 A. To consider HB 218 out of its regular calendar  
13 order on the Senate Floor.

14 Q. Correct.

15 A. Outside of a local calendar, yes, that's true,  
16 we would have taken the two-thirds vote of the members  
17 present and voting.

18 Q. And from this history, it does not look like HB  
19 218 was placed on the local calendar; is that right?

20 A. That's right. And I only qualify my answer  
21 because bills are taken up out of regular order on the  
22 local calendar without a suspension of the Regular Order  
23 of Business. But, yeah, you know --

24 Q. Excuse me.

25 A. -- this bill was not in the local calendar.

96

1 Q. Are there any limitations on what sorts of  
2 bills can be placed on the local calendar?

3 A. Yes. The biggest limitation is a bill that is  
4 contested in committee, it is not eligible for  
5 consideration by the local calendar.

6 Q. And what does it mean for a bill to be  
7 contested in committee?

8 A. That means it -- if reported favorably, it  
9 would have received a "no" vote from a member of the  
10 committee.

11 Q. Am I correct that it looks like from this  
12 legislative history that on May 15th, 2007, there was a  
13 vote taken to suspend the Regular Order of Business with  
14 respect to HB 218?

15 A. Yes.

16 Q. Actually, I want to ask you one other thing  
17 before we talk about the vote to suspend the regular  
18 order.

19 It looks like on May 3rd, 2007, there was  
20 a co-sponsor of the bill authorized. What does that  
21 mean?

22 A. Co-sponsor authorized. Generally, for  
23 legislation introduced -- well, this is a House Bill.

24 When you have a House Bill in the Senate,  
25 generally, there is what I would call a lead sponsor

97

1 from the Senate, so in legislative terms, we -- authors  
2 are considered bills -- authors of bills for bills in  
3 their originating chamber. So the author of HB 218  
4 would have been someone from the House of  
5 Representatives. When that legislation comes over from  
6 the House, you know, a senator would need to move that  
7 process forward, and so he would sponsor the bill. So  
8 there is usually a lead sponsor for a bill.

9 We, also, permit co-sponsors, and that's  
10 usually done in writing, I believe you have to have  
11 permission from the main sponsor to be able to do that  
12 and it is usually, I think we have, what we call "green  
13 cards" that the members would sign and that would  
14 indicate a member's major support of a bill through  
15 their sponsorship.

16 Q. And turning back to the legislative history.

17 Am I correct that this legislative history  
18 for HB 218 reflects that the motion to suspend the  
19 Regular Order of Business failed to receive the required  
20 vote on May 15th, 2007?

21 A. I don't think you can tell that from this list  
22 of actions.

23 Q. Do you see the entry on May 15, 2007, I think  
24 it is the third to last entry that, "The motion to  
25 suspend" --

98

1 A. Oh.

2 Q. -- "regular order fails"?

3 A. Yes. I am sorry, I just didn't even see that.

4 Q. Oh, no problem at all. Does that mean that  
5 the -- that the motion to suspend the regular order  
6 failed to receive the required vote?

7 A. Yes. That would mean that it failed.

8 Q. And in looking at the remainder of this  
9 legislative history, are you able to tell what the  
10 ultimate disposition of HB 218 in the Senate was?

11 A. Appears that it wasn't taken up out of the  
12 regular order or taken up at all.

13 Q. We have already talked about 2009 a bit. And I  
14 think you already testified that you remember a bill  
15 being introduced in the Senate with respect to voter  
16 identification requirements in 2009; is that right?

17 A. Yes.

18 Q. And I think you stated that the bill you  
19 remembered being introduced in 2009 was sponsored by  
20 Senator Fraser; is that right?

21 A. Yes. Authored, yes.

22 Q. Oh, excuse me, authored.

23 Did you have any discussions with Senator  
24 Fraser about voter identification legislation in 2009?

25 A. Could you be more specific?

99

1 Q. Sure. Let's say prior to the time that Senator  
2 Fraser introduced voter identification related bill in  
3 2009, did you have any discussions with Senator Fraser  
4 about either the substance of the bill or the procedure  
5 that would be used to consider the bill?

6 A. I don't recall any conversations about the  
7 substance. As to the procedures, probably I did.

8 Q. Did you ever discuss the substance of  
9 legislation with Lieutenant Governor Dewhurst as a  
10 general matter?

11 A. Yes, I think substance does come up.

12 Q. Do you recall discussing the substance of any  
13 voter identification related bills with Lieutenant  
14 Governor Dewhurst in the 2009 Regular Session?

15 MR. FREDERICK: Just caution you not to  
16 reveal the actual substance of any conversation.

17 A. Uh-huh.

18 MR. FREDERICK: But subject to that  
19 instruction, you may answer.

20 A. You know, I don't recall specific conversations  
21 about the substance. It's possible from a parliamentary  
22 perspective that we would have had a conversation about  
23 an amendment or something on the bill. But in general,  
24 I don't believe I had any conversations with him about  
25 the substance of the legislation.

100

1 Q. This document has previously been marked as  
2 League Exhibit 10.

3 (Exhibit No. 10 previously marked.)

4 Q. And Ms. Davis, please take as much time as you  
5 need to look over the document.

6 A. Okay.

7 Q. And the document you're looking at appears to  
8 be a copy of at least one version of SB 362.

9 Do you agree with that?

10 A. Yes.

11 Q. And are you able to tell which legislative  
12 session this bill was considered during?

13 A. Been considered during the 2009 Legislative  
14 Session.

15 Q. And is this the Bill you were referring to  
16 earlier when you said you remembered Senator Fraser  
17 offering a voter identification bill in the 2009 Regular  
18 Session.

19 A. Yes. This would be a version of the bill.

20 Q. This document has previously been marked as  
21 League Exhibit 11.

22 (Exhibit No. 11 previously marked.)

23 Q. And Ms. Davis, please take a moment or as much  
24 time as you need to look over the document.

25 A. Okay.

101

1 Q. Do you agree, this appears to be a legislative  
2 history from the Legislative Reference Library of Texas  
3 concerning SB 362?

4 A. Yes.

5 Q. And that Bill was considered during the 81st  
6 Regular Session; is that right?

7 A. Yes.

8 Q. And do you agree from the title of the Bill  
9 and, also, as reflected in the legislative history that  
10 SB 362 was a Bill relating to requiring a voter to  
11 present proof of identification.

12 A. Yes.

13 Q. And I see that the first entry here on the  
14 legislative history from December 15, 2008, states that,  
15 "the Bill was received by the Secretary of the Senate."

16 What does that mean?

17 A. What that means is that, it was physically  
18 received in the Secretary of the Senate's Office on  
19 December 15th, 2008. We have in the Senate what's  
20 called "a prefiling" and we would not have been in  
21 legislative session on that date, so the action would  
22 show that it was received. And I guess the action shows  
23 it is filed, but it is not really considered, you know,  
24 it can't have any -- it is really prefiling, it can't  
25 have any legislative activity until the Senate is

102

1 actually in session.

2 Q. It looks like that the bill that was read  
3 before the Senate for the first time on February 17,  
4 2009.

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. And it looks like that same day the Bill was  
9 referred to the Committee of the Whole Senate; is that  
10 right?

11 A. Yes.

12 Q. Do you know why SB 362 was referred to the  
13 Committee of the Whole Senate as opposed to being  
14 referred to the State Affairs Committee or some other  
15 standing committee?

16 MR. FREDERICK: I am going to object on  
17 the basis of legislative privilege. To the extent that  
18 this would call for you to reveal your knowledge as to  
19 the reason why; as to the question of whether or not you  
20 were aware why, you may answer only that question.

21 A. Yes.

22 Q. (By Mr. Harris) Are you aware of any publicly  
23 known or publicly stated reasons why the Bill was  
24 referred to the Committee of the Whole Senate as opposed  
25 to the Senate State Affairs Committee or some other

103

1 standing committee?

2 A. I don't recall whether the Lieutenant Governor  
3 made public comments or statements as to the referral of  
4 this Bill.

5 Q. Did you have -- without revealing the substance  
6 of any discussions, did you have discussions with the  
7 Lieutenant Governor regarding which committee to refer  
8 SB 362 to?

9 A. I probably would have but I don't recall.

10 Q. Did you have -- without, at this point,  
11 revealing the substance of any discussions, did you have  
12 any discussions with any other members of the Senate  
13 regarding which committee SB 362 should be referred to?

14 A. I don't remember.

15 Q. Do you remember any discussions with anyone  
16 other than Lieutenant Governor or other members of the  
17 Senate regarding which committee to refer SB 362 to?

18 A. I really don't remember.

19 Q. So it looks like the Bill was considered in  
20 committee in the Committee of the Whole on March 10,  
21 2009; is that right?

22 A. Yes.

23 Q. And then the Bill was reported favorably from  
24 the committee without any amendment on March 11, 2009.  
25 Am I reading that right?

104

1 A. That it was -- can you repeat your question? I  
2 am sorry.

3 Q. Sure. Am I correct that the legislative  
4 history reflects that on March 11, 2009, SB 362 was  
5 reported favorably out of the Committee of the Whole  
6 without any amendment to the Bill?

7 A. Yes. You know what, I am going to need a  
8 break, I think, because I am starting to not -- I need  
9 to eat something.

10 MR. HARRIS: Sure. Let's take a lunch  
11 break.

12 THE WITNESS: Okay.

13 MR. HARRIS: How about, I don't know, half  
14 hour, 45 minutes, something like that work for you guys?

15 MS. BERKOWER: Do you want to go off the  
16 record a second?

17 MR. HARRIS: Sure.

18 (Luncheon recess.)

19 Q. (By Mr. Harris) If I am not mistaken, prior to  
20 the time we took a break, there was a question pending

21 I wonder if the court reporter would be  
22 able to read back the last question.

23 (Last question read back.)

24 Q. Having taken a break, we can continue through  
25 the legislative history.



105

1 I see that on March 11, 2009, there is an  
 2 entry on the legislative history for SB 362 stating that  
 3 the Bill was set as a special order.  
 4 Do you see that, Ms. Davis?  
 5 A. Yes.  
 6 Q. And it looks like the date in the date column  
 7 is March 11, 2009. But then there is a comment that  
 8 say, "March 16th, '09."  
 9 Do you see where I am looking?  
 10 A. Yes.  
 11 Q. Do you know what that comment refers to?  
 12 A. I really don't. These are computer entries  
 13 done by people at the Legislative Reference Library. I  
 14 am not positive what that means.  
 15 Q. Okay. And then it looks like on March 17,  
 16 2009, the Bill was laid before the Senate and then read  
 17 for a second time.  
 18 A. Yes.  
 19 Q. Right?  
 20 And then it looks like there was a point  
 21 of order made on March 17, 2009.  
 22 What is a "point of order"?  
 23 A. A "point of order" is basically a member of the  
 24 legislative body pointing out what he or she may believe  
 25 to be a deviation from the rules of the Senate and the

106

1 procedures used.  
 2 Q. And do you recall what the nature of the point  
 3 of order raised with respect to SB 362 on March 17 was?  
 4 A. I -- actually, I don't.  
 5 Q. In order to determine that, what documents  
 6 could you look to, would it be the Senate Journal?  
 7 A. Yes.  
 8 Q. And with respect to the entry that the SB 362  
 9 was set as a special order: Am I correct that under  
 10 Rule 5.11(d) of the 2009 Senate Rules that we looked at  
 11 before, in order for SB 362 to be made a special order,  
 12 that would have required a vote of the majority of the  
 13 members present in the Senate or -- I will ask you.  
 14 A. Would have required a majority of the members  
 15 of the Senate.  
 16 Q. And then skipping ahead a bit. It looks like  
 17 on March 18, 2009, the Bill was read for a third time.  
 18 Do you see that entry?  
 19 A. For a third time. Yes.  
 20 Q. And then it looks like on that same day, I see  
 21 entries, one that says, "passed" and another says  
 22 "reported engrossed."  
 23 Does that mean that the Bill passed a vote  
 24 of the entire Senate?  
 25 A. "Passed" would mean that it passed on -- that

107

1 it finally passed the Senate. It would be a majority of  
 2 the members present to pass the Bill.  
 3 Q. And then it looks like the Bill was read for  
 4 the first time in the House on March 31st, 2009; is that  
 5 right?  
 6 A. Yes.  
 7 Q. And then it says, "referred to elections."  
 8 Do you understand that to mean the House  
 9 Committee on Elections?  
 10 A. Yes, probably.  
 11 Q. Do you know what the subject matter covered by  
 12 the House Elections Committee is?  
 13 A. I can only presume through its title that it is  
 14 elections, I am not familiar with the jurisdiction of  
 15 their committees.  
 16 Q. Are you familiar with the term "chub" or  
 17 "chub-a-thon"?  
 18 A. Yes. It is related to chubbing.  
 19 Q. And what is "chubbing"?  
 20 A. I think, as I understand chubbing, it would be  
 21 to, you know, to extend a -- to have extensive debate  
 22 about bills that are probably not related to the object  
 23 of the chubbing, and that is, you know, chubbing is  
 24 basically a delay tactic to keep from getting to a piece  
 25 of legislation.

108

1 Q. Was there chubbing with respect to SB 362 in  
 2 the House during the 2009 Regular Session?  
 3 A. I think generally, I would probably call it  
 4 chubbing, I don't remember precisely how they did it or  
 5 how it happened, but --  
 6 Q. And are you able to tell looking at this  
 7 legislative history for SB 362 what the ultimate outcome  
 8 was with respect to SB 362 on the House side?  
 9 A. It appears that it was -- well, that it was not  
 10 passed by the House.  
 11 Q. It looks like the last entry in this  
 12 legislative history states that the Bill was placed on  
 13 the major state calendar on May 23rd, 2009. I realize  
 14 we are talking about the House side. But do you have  
 15 any understanding of what the "major state calendar" is?  
 16 A. More or less, but I really wouldn't be able to  
 17 answer very specific questions about it.  
 18 Q. That's fine. Can you just briefly tell me what  
 19 you do understand it to mean?  
 20 A. I think my -- as far as my capabilities of this  
 21 go, it is one of their calendars. It would have -- I  
 22 know that they have several calendars, so it is one of  
 23 the calendars that they use, they would have placed it  
 24 on that calendar. I don't know what the specific  
 25 criteria for a bill being placed on the major state

<p style="text-align: center;">109</p> <p>1 calendar is.</p> <p>2 Q. And I think you said that a Regular Session of</p> <p>3 the Legislature would last for 140 days; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. I believe you previously stated that you recall</p> <p>6 that a bill concerning voter identification requirements</p> <p>7 was introduced in the 2011 Regular Session of the</p> <p>8 Legislature; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And do you remember the bill number of that</p> <p>11 Bill?</p> <p>12 A. Senate Bill 14.</p> <p>13 Q. This document has previously been marked as</p> <p>14 League Exhibit 12.</p> <p>15 (Exhibit No. 12 previously marked.)</p> <p>16 Q. And Ms. Davis, please take some time to look</p> <p>17 over this document.</p> <p>18 A. Okay.</p> <p>19 Q. Do you recognize this to be a version of Senate</p> <p>20 Bill 14 that we were just discussing?</p> <p>21 A. Yes.</p> <p>22 Q. And from the -- from the title of this Bill, do</p> <p>23 you see it states that it relates to requirements to</p> <p>24 vote, including presenting proof of identification,</p> <p>25 providing criminal penalties?</p>	<p style="text-align: center;">111</p> <p>1 computer records of actions by the Legislature.</p> <p>2 Q. It looks like this history is in the reverse</p> <p>3 order of the ones we have been looking at previously.</p> <p>4 But looking at the last page of the exhibit, it appears</p> <p>5 that SB 14 was filed on January 12th, 2011. Does that</p> <p>6 look right?</p> <p>7 A. Yes. That's right.</p> <p>8 Q. And so, prior to January 12, 2011, did you have</p> <p>9 any discussions with Lieutenant Governor Dewhurst about</p> <p>10 SB 14?</p> <p>11 A. I didn't have any specific conversations with</p> <p>12 him about the Bill itself.</p> <p>13 Q. Did you have any general conversations with him</p> <p>14 that touched upon SB 14, prior to January 12th, 2011?</p> <p>15 A. I am not even sure I had general conversations</p> <p>16 about Senate Bill 14, specifically.</p> <p>17 Q. Who was the author of Senate Bill 14?</p> <p>18 A. It was Senator Troy Fraser.</p> <p>19 Q. Did you have any discussions with Senator</p> <p>20 Fraser about SB 14 prior to the time it was filed?</p> <p>21 A. About the Bill itself, no.</p> <p>22 Q. Did you have any discussions with Senator</p> <p>23 Fraser about the procedure related to SB 14 prior to the</p> <p>24 time the Bill was filed?</p> <p>25 A. I probably did.</p>
<p style="text-align: center;">110</p> <p>1 A. Yes.</p> <p>2 Q. Did you discuss Senate Bill 14 with Lieutenant</p> <p>3 Governor Dewhurst prior to the time that the Bill was</p> <p>4 introduced in the Senate?</p> <p>5 A. I am not sure I can answer that. I don't even</p> <p>6 recall when it was introduced, actually. I may have</p> <p>7 discussed it with him.</p> <p>8 Q. Excuse me for just a moment.</p> <p>9 MS. BERKOWER: This is what I have.</p> <p>10 MR. HARRIS: Do you have enough copies?</p> <p>11 MS. BERKOWER: Yeah.</p> <p>12 MR. HARRIS: Thank you.</p> <p>13 I would ask that this document be marked</p> <p>14 as League Exhibit 17.</p> <p>15 (Deposition Exhibit No. 17 marked.)</p> <p>16 Q. (By Mr. Harris) And Ms. Davis, please take a</p> <p>17 few moments to look over Exhibit 17.</p> <p>18 A. Okay.</p> <p>19 Q. Do you agree this appears to be a bill history</p> <p>20 of SB 14?</p> <p>21 A. Yes.</p> <p>22 Q. This one says that it is from the Texas</p> <p>23 Legislature Online History. Do you know what that is?</p> <p>24 A. I think that's the -- the Legislature's -- what</p> <p>25 they call sort of their Internet access into the</p>	<p style="text-align: center;">112</p> <p>1 Q. Do you recall having more than one such</p> <p>2 discussion?</p> <p>3 A. I don't recall the number.</p> <p>4 Q. Was anyone else present during that discussion</p> <p>5 with Senator Fraser?</p> <p>6 A. They probably would have been.</p> <p>7 Q. Who do you think would have been present?</p> <p>8 A. You know, it's -- about the procedures -- and</p> <p>9 if you're asking about prior to January 12, I would</p> <p>10 almost have to look at a calendar to really remember</p> <p>11 what day that was. But I think it is safe to say that I</p> <p>12 had discussions about procedures relating to voter ID,</p> <p>13 you know, at the beginning of session. When it would</p> <p>14 have coincided with the filing of the Bill, I really</p> <p>15 don't know.</p> <p>16 Q. Do you recall having discussions with Senator</p> <p>17 Fraser about SB 14 or the procedure used to consider SB</p> <p>18 14 after the time that the Bill was filed?</p> <p>19 A. Yes.</p> <p>20 Q. How many discussions did you have with Senator</p> <p>21 Fraser of that nature?</p> <p>22 A. It probably would have been multiple</p> <p>23 discussions taken into consideration the number of times</p> <p>24 I speak with members on the Senate Floor.</p> <p>25 Q. Do you think you had more than five such</p>

<p style="text-align: center;">113</p> <p>1 discussions?</p> <p>2 A. It is possible, I --</p> <p>3 Q. Did you discuss SB 14 with Lieutenant Governor</p> <p>4 Dewhurst after the time the Bill was filed?</p> <p>5 A. I would have had discussions with him of a</p> <p>6 procedural nature after the Bill was filed, yes.</p> <p>7 Q. Was voter ID or voter -- laws dealing with</p> <p>8 voter identification or SB 14, in particular, designated</p> <p>9 as an emergency item by Governor Perry?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know why Governor Perry designated voter</p> <p>12 identification legislation as an emergency item in 2011?</p> <p>13 MR. FREDERICK: Object on the basis of</p> <p>14 privilege.</p> <p>15 I think this specific question is phrased</p> <p>16 whether or not you know why and I believe you may answer</p> <p>17 that question. But I would caution you not -- to the</p> <p>18 extent you even know, not to reveal any of the reasons.</p> <p>19 A. No, I don't know.</p> <p>20 Q. (By Mr. Harris) Did you have any discussions</p> <p>21 with Governor Perry or his staff regarding the</p> <p>22 designation of SB 14 as an emergency item?</p> <p>23 A. I don't remember having any discussions.</p> <p>24 Q. Did you have any discussions with the</p> <p>25 Lieutenant Governor about the designation of SB 14 as an</p>	<p style="text-align: center;">115</p> <p>1 A. Yes.</p> <p>2 Q. Did you have any discussions with Ms. Rathgeber</p> <p>3 regarding SB 14?</p> <p>4 A. Yes.</p> <p>5 Q. How frequently did you discuss SB 14 with</p> <p>6 Ms. Rathgeber?</p> <p>7 A. I wouldn't be able to recall how frequent that</p> <p>8 was.</p> <p>9 Q. Did you have any discussions with Ms. Rathgeber</p> <p>10 about the designation of SB 14 or voter ID legislation</p> <p>11 as an emergency item?</p> <p>12 A. Can I consult with my attorney for a moment?</p> <p>13 MR. HARRIS: Absolutely.</p> <p>14 (Brief pause.)</p> <p>15 Q. (By Mr. Harris) So I think there was a</p> <p>16 question pending. Do you want the Court reporter to</p> <p>17 read it back?</p> <p>18 A. Sure, please.</p> <p>19 (Last question read back.)</p> <p>20 A. I don't remember.</p> <p>21 Q. Do you know Blaine Brunson?</p> <p>22 A. Yes.</p> <p>23 Q. And Mr. Brunson is the Lieutenant Governor's</p> <p>24 Chief of Staff; is that right?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">114</p> <p>1 emergency item?</p> <p>2 A. I don't remember if I did.</p> <p>3 Q. How about the Lieutenant Governor's staff? I</p> <p>4 think you previously said that you know -- you know of a</p> <p>5 Mr. Bryan Hebert; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Is it correct that Mr. Herbert worked on voter</p> <p>8 identification legislation as part of his role in the</p> <p>9 Lieutenant Governor's office?</p> <p>10 A. Yes.</p> <p>11 Q. And did you of have any discussions with</p> <p>12 Mr. Herbert about SB 14?</p> <p>13 A. I probably did.</p> <p>14 Q. Did you ever have any discussions with</p> <p>15 Mr. Herbert about the designation of SB 14 or voter</p> <p>16 identification legislation as an emergency item by</p> <p>17 Governor Perry?</p> <p>18 A. I don't remember.</p> <p>19 Q. Do you know Julia Rathgeber?</p> <p>20 A. Yes.</p> <p>21 Q. And she is the Deputy Chief of Staff to the</p> <p>22 Lieutenant Governor; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. And she held that position in 2011 as well; is</p> <p>25 that right?</p>	<p style="text-align: center;">116</p> <p>1 Q. Did you have any discussions with Mr. Brunson</p> <p>2 about SB 14 at any time during the 2011 Regular Session?</p> <p>3 A. Yes.</p> <p>4 Q. How many times did you discuss SB 14 with</p> <p>5 Mr. Brunson?</p> <p>6 A. I wouldn't be able to recall the frequency or</p> <p>7 amount.</p> <p>8 Q. Would you say you had more than five</p> <p>9 discussions with him?</p> <p>10 A. It is possible -- I don't know.</p> <p>11 Q. Did you discuss with Mr. Brunson the</p> <p>12 designation of SB 14 or voter legislation as an</p> <p>13 emergency item by the Governor?</p> <p>14 A. I don't remember.</p> <p>15 Q. Other than the other individuals we have talked</p> <p>16 about which were Mr. Brunson, Ms. Rathgeber, Mr. Hebert,</p> <p>17 the Governor, and the Governor's staff, did you have</p> <p>18 discussions with anyone else regarding the designation</p> <p>19 of SB 14 as an emergency item by Governor Perry?</p> <p>20 A. I don't remember.</p> <p>21 Q. So it looks like from the legislative history</p> <p>22 that the Bill was read for the first time on January</p> <p>23 24th, 2011.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do.</p>

117

1 Q. If SB 14 had not been designated as an  
2 emergency item by Governor Perry, would it have been  
3 possible for the Bill to have been read for the first  
4 time on January 24th, 2011?

5 A. Yes.

6 Q. I believe you testified previously that there  
7 is -- there are constitutional rules governing when  
8 bills could be considered; is that right?

9 A. Yes.

10 Q. So with respect to SB 14, what is -- what, if  
11 any, significance does the fact that the Governor  
12 declared the Bill to be an emergency item have on the  
13 timing with respect to when the Bill could be  
14 considered?

15 A. Would have enabled the Senate to consider  
16 Senate Bill 14 in committee before the first 30 days of  
17 session -- or during the first 30 days of session.

18 Q. I see. So in the next entry, one up, it says  
19 that the Bill was referred to the Committee of the Whole  
20 on January 24th, 2011; is that right?

21 A. Yes.

22 Q. So it is the case that, had the Governor Perry  
23 not designated SB 14 as an emergency item, that it would  
24 not have been possible to refer the Bill to the  
25 Committee of the Whole on that date?

118

1 A. No. A bill can be referred at any time.

2 Q. I see. So it looks like a public hearing was  
3 scheduled on the Bill on January 24th, 2011, and I take  
4 it that would have been in the Committee of the Whole;  
5 is that right?

6 A. Yes.

7 Q. Would it have been possible to have a public  
8 hearing on the Bill in the Committee of the Whole on  
9 January 24th, 2011, had Governor Perry not designated SB  
10 14 as an emergency item?

11 A. No. It would not have been possible for the  
12 committee to consider a bill within the first 30 days  
13 without the Governor either declaring it an emergency or  
14 the Senate suspending the constitutional order of  
15 business.

16 Q. What vote would be required to suspend the  
17 constitutional order of business?

18 A. It's a four-fifths vote of the members.

19 Q. Did you have discussions with Lieutenant  
20 Governor Dewhurst regarding the referral of SB 14 to the  
21 Committee of the Whole?

22 A. Yes.

23 Q. How many times did you and Lieutenant Governor  
24 discuss that subject?

25 A. I don't remember.

119

1 Q. Do you remember having more than one discussion  
2 with the Lieutenant Governor about referring to the Bill  
3 to the Committee of the Whole?

4 A. No, I don't remember.

5 Q. Did you discuss referring the Bill to the  
6 Committee of the Whole with any other members of the  
7 Senate?

8 A. I don't remember having a discussion.

9 Q. Do you know why the Lieutenant Governor  
10 referred SB 14 to the Committee of the Whole?

11 MR. FREDERICK: Object on the basis of  
12 privilege as phrased. To the extent the question asks  
13 whether or not you are aware of why, you may answer the  
14 yes or no question. I caution you, however, not to  
15 reveal the Lieutenant Governor's thought process. So  
16 you may answer subject to that instruction.

17 A. I am aware of why he referred --

18 Q. Are you -- excuse me.

19 A. -- the bill.

20 Q. Are you aware of any publicly known or any  
21 publicly stated reasons why the Lieutenant Governor  
22 referred SB 14 to the Committee of the Whole?

23 A. I don't remember if he made any public comments  
24 related to the referral of the Bill.

25 Q. It appears from the legislative history that on

120

1 January 25th, 2011, SB 14 was set as a special order; is  
2 that right?

3 A. On January 25th?

4 Q. Yes.

5 A. Yes.

6 Q. And under Rule 5.11(d) of the 2011 Senate Rules  
7 that we looked at previously, is it correct to set SB 14  
8 as a special order, that would have required a vote of  
9 the majority of the members of the Senate?

10 A. Yes.

11 Q. And what was the effect or the significance of  
12 designating SB 14 as a special order?

13 A. I am not sure it had any affect. The  
14 significance would have been to alert the members to  
15 when the Bill would be taken up by the Senate.

16 Q. Did designating SB 14 as a special order enable  
17 the Senate to consider SB 14 out of the Regular Order of  
18 Business?

19 A. No, not really.

20 Q. Then why would SB 14 be designated as a special  
21 order?

22 A. In this case, to give the members notice of  
23 when the Bill was to be taken up.

24 Q. It is your testimony that there is no other  
25 reason why the Senate would want to designate SB 14 as a

<p style="text-align: center;">121</p> <p>1 special order?</p> <p>2 MR. FREDERICK: Object. Mischaracterizes</p> <p>3 the testimony.</p> <p>4 I would, also, interject an objection on</p> <p>5 privilege to the extent this -- this seeks to discover</p> <p>6 any privilege statements about why any particular</p> <p>7 legislative action was undertaken.</p> <p>8 Q. Do you need the court reporter -- I think there</p> <p>9 was a question pending. Do you want the court</p> <p>10 reporter --</p> <p>11 A. I am sorry. I didn't realize that.</p> <p>12 Q. That's fine. Maybe the court reporter can read</p> <p>13 it back.</p> <p>14 (Last question read back.)</p> <p>15 MR. FREDERICK: Objection,</p> <p>16 mischaracterizes the testimony. Object to the extent it</p> <p>17 calls for a privileged statement about the reason why</p> <p>18 any particular senator would want to engage in any</p> <p>19 legislative act. I would, also, object to vague.</p> <p>20 Object to the form of the question.</p> <p>21 To the extent you can answer without</p> <p>22 revealing any privileged matter, you may do see, if you</p> <p>23 can.</p> <p>24 A. I am not sure I can answer that.</p> <p>25 Q. (By Mr. Harris) Is it your testimony that, had</p>	<p style="text-align: center;">123</p> <p>1 revealing privileged matters, you may do so. I would,</p> <p>2 however, object to the extent it calls for speculation.</p> <p>3 A. Setting a special order gives notice to the</p> <p>4 Senate of when a bill is to be taken up on the calendar,</p> <p>5 and that would be the effect of making the special</p> <p>6 order.</p> <p>7 Q. Are there other ways to provide notice to the</p> <p>8 members as to when a bill would be considered other than</p> <p>9 setting a bill as a special order?</p> <p>10 A. Procedurally, no. It's possible -- sometimes</p> <p>11 during debates or announcements, the members will tell</p> <p>12 each other or discuss when they intend to take up</p> <p>13 business. But just based on a calendar system alone, it</p> <p>14 would not indicate to you the time that a particular</p> <p>15 bill is going to be taken up by the Senate.</p> <p>16 Q. I think you stated previously and maybe even</p> <p>17 more than one time, that setting a bill as a special</p> <p>18 order allows the bill to be considered out of the</p> <p>19 regular order; is that correct?</p> <p>20 A. Special orders are above the regular order in</p> <p>21 precedence in the Senate's orders of business. So to</p> <p>22 the extent that a bill is actually being taken out of a</p> <p>23 regular order, that can be the effect.</p> <p>24 Q. Was SB 14 considered out of the Regular Order</p> <p>25 of Business?</p>
<p style="text-align: center;">122</p> <p>1 SB 14 not been set as a special order, that this</p> <p>2 legislative history could appear no different than it</p> <p>3 does now?</p> <p>4 MR. FREDERICK: Objection, vague.</p> <p>5 Objection, calls for speculation.</p> <p>6 A. I really don't understand your question.</p> <p>7 Q. Simply trying to understand why the Senate --</p> <p>8 and without regard to any particular legislator and,</p> <p>9 especially, without revealing any privileged matter,</p> <p>10 would take it upon itself to write a special rule</p> <p>11 regarding the designation of voter ID legislation as a</p> <p>12 special order and then vote to make the bill a special</p> <p>13 order if you're saying there is really know difference</p> <p>14 either way whether it does that or not.</p> <p>15 MR. FREDERICK: I object to the form of</p> <p>16 the question. Object as vague. Object as assuming</p> <p>17 facts not in evidence.</p> <p>18 You may answer, if you can.</p> <p>19 A. So what is your question exactly?</p> <p>20 Q. (By Mr. Harris) My question is: Why would the</p> <p>21 Senate vote to make SB 14 a special order?</p> <p>22 MR. FREDERICK: I will object on the basis</p> <p>23 of privilege, only to the extent that it would call for</p> <p>24 you to reveal privileged matters.</p> <p>25 But if you can answer generally without</p>	<p style="text-align: center;">124</p> <p>1 A. It was considered as a special order.</p> <p>2 Q. Does that mean that it was considered out of</p> <p>3 the Regular Order of Business?</p> <p>4 A. I wouldn't say it is "out of the order."</p> <p>5 Special orders are taken up before the Regular Order of</p> <p>6 Business is considered.</p> <p>7 Q. If special orders allow a bill to be considered</p> <p>8 before other bills, why wouldn't senators try to get all</p> <p>9 of their bills designated as special orders?</p> <p>10 MR. FREDERICK: Objection, calls for</p> <p>11 speculation. You may answer, if you can.</p> <p>12 A. Why wouldn't -- the question is: Why wouldn't</p> <p>13 they set all their bills as special orders?</p> <p>14 Q. Yes, or at least try to.</p> <p>15 MR. FREDERICK: Same objection.</p> <p>16 A. Well, I am not sure how to answer that</p> <p>17 question. I don't think members always want to schedule</p> <p>18 their bills with specificity for particular times.</p> <p>19 Q. (By Mr. Harris) I am sorry to continue to</p> <p>20 dwell on this but it is an important issue and I just</p> <p>21 want to make sure the record is clear. I asked you</p> <p>22 earlier what the significance of designating SB 14 as a</p> <p>23 special order was, and you said that the significance</p> <p>24 was that, it gave notice to all the members as to when</p> <p>25 the bill would be considered.</p>

125

1 Do you remember that?

2 A. Yes.

3 Q. But now in subsequent questioning, we have

4 established that, by setting SB 14 as a special order,

5 it enabled SB 14 to be considered before other bills

6 that were not designated as a special order. Why don't

7 you consider that to be an effect or one of the

8 significances of designating SB 14 as a special order?

9 MR. FREDERICK: Object to the form.

10 Object to the extent it mischaracterizes prior testimony

11 and assumes facts not in evidence.

12 You may answer, if you can.

13 A. I think the form of your question is

14 inaccurate.

15 Q. Please correct me. I am really here just

16 trying to understand what happens. Please tell me what

17 I don't have right.

18 A. There were not other bills ahead of Senate Bill

19 14 on the Regular Order of Business.

20 Q. So is it the case that -- well, I think you

21 previously stated that the bill number has no effect on

22 when a Bill is considered under the Regular Order of

23 Business; is that right?

24 A. That's right. The actual bill number which is

25 just its designation as -- for the convenience of the

126

1 members.

2 Q. If SB 14 had not been designated as a special

3 order, could it still have been considered by the entire

4 Senate on January 26, 2011?

5 A. Yes.

6 Q. And would that be in accordance with the

7 Regular Order of Business?

8 A. By its rules, it could have considered the bill

9 on January 26.

10 Q. So is it your testimony that, by making a

11 special rule with respect to designating voter ID

12 legislation as a special order by a majority vote as

13 opposed to the normal two-thirds of the member's vote,

14 that the only real affect of that, is that, it provided

15 a means to give members notice of when the bill would be

16 considered?

17 MR. FREDERICK: Object to the extent it

18 mischaracterizes the testimony. You may answer.

19 A. I think the only practical effect of that

20 rule's provision for this particular bill, at this

21 particular time here in the legislative session, the

22 only practical effect was to provide notice of when the

23 Bill would be taken up.

24 Q. If the -- the only affect of making something a

25 special order, or at least in this case, making it a

127

1 special order would be to give members notice of when a

2 bill would be considered then why did the Senate rules

3 require a two-thirds vote to do that?

4 MR. FREDERICK: Objection, vague.

5 Objection, assumes facts not in evidence.

6 You may answer the question, if you can.

7 I, also, object to the extent it calls for

8 speculation.

9 A. You know, I think you have to interpret the

10 rules and their effects based on what point in the

11 parliamentary process you were at, and for this

12 particular Bill, at this particular time, the practical

13 effect of setting it for a special order would have been

14 to give the notice to the members that the Bill was

15 going to be taken up at a particular time.

16 Q. (By Mr. Harris) And a couple times now, you

17 have referred to "this particular Bill at this

18 particular time." What do you mean by that?

19 A. What I mean is, on January 25th, when the Bill

20 was made a special order for January 26th, at that point

21 in time, the effect of the special order for

22 parliamentary purposes for the members would have been

23 to give them notice that the Bill would be taken up 24

24 hours later.

25 Q. Was there a blocker bill filed in the 2011

128

1 Regular Session?

2 A. Yes.

3 Q. Had the blocker bill been considered by the

4 Senate, by January 25th, 2011?

5 A. I don't believe it was.

6 Q. So isn't it correct that it would not have been

7 possible to consider SB 14 prior to consideration of the

8 Blocker Bill, had SB 14 not been set as a special order?

9 MR. FREDERICK: Object to the extent it

10 assumes facts not in evidence. You may answer.

11 A. You might have to repeat your question.

12 Q. Could the court reporter please read back the

13 question.

14 (Last question read back.)

15 MR. FREDERICK: Object. Assumes facts not

16 in evidence, but you may answer.

17 A. What was the previous question to that? Do you

18 mind reading that question.

19 (Requested testimony read back.)

20 MR. FREDERICK: Same objection. You may

21 answer.

22 A. My first answer which was, no, the Senate had

23 not considered a blocker bill.

24 And I think the answer to the second

25 question, although it is convoluted way of asking the



129

1 question is, no, the Senate did not need -- the Blocker  
2 Bill had no parliamentary interaction with Senate Bill  
3 14 whatsoever.

4 Q. So under the Regular Order of Business, is it  
5 correct that the Blocker Bill would have to be  
6 considered before other bills?

7 A. Are you talking about the Blocker Bill in 2011.

8 Q. Yes, ma'am.

9 A. Well, at this particular time, when are you  
10 asking me?

11 Q. Yes. At this time in January 20 -- on or  
12 around January 25th, 2011.

13 A. And your question was?

14 Q. I am just trying to understand. We talked  
15 before about a Blocker Bill. And I -- please correct me  
16 if I am wrong. Again, I am really trying to understand  
17 this. But I think you said that a blocker bill was a  
18 bill that would be filed and under the Regular Order of  
19 Business have to be considered before any other bills  
20 could be considered; is that right?

21 A. You know that's the -- that's the way it has  
22 been used, yes.

23 Q. And so I think you, also, said that, prior to  
24 January 25th, 2011, there was a blocker bill filed.

25 A. I don't believe I ever said that.

130

1 Q. Okay. So I will ask you that.

2 Prior to January 25th, 2011, was there a  
3 blocker bill filed?

4 A. I don't remember if it had been filed.

5 Q. How would one go about answering that question  
6 as to whether or not a blocker bill had been filed as of  
7 January 25th, 2011?

8 A. Filing would be hard to determine from the  
9 journals, but you could -- but it is possible to tell  
10 from the journals. The act of filing isn't always  
11 included in the journals.

12 Q. Were there other bills filed prior to the time  
13 that SB 14 was filed?

14 A. Yes.

15 Q. And under the Regular Order of Business, would  
16 it have been necessary to consider those bills prior to  
17 consideration of SB 14?

18 A. No.

19 Q. Assuming a blocker bill had been filed prior to  
20 January 25th, 2011, under the Regular Order of Business,  
21 would it have been necessary to consider the blocker  
22 bill before considering SB 14?

23 A. Filed, no.

24 Q. I take it from your answer that there could be  
25 some means through which a blocker bill might have

131

1 prevented consideration to SB 14 prior to the  
2 consideration of the blocker bill but it is not  
3 dependent on filing.

4 A. That's correct.

5 Q. What would it be dependent on?

6 A. If a bill had been reported by a Senate  
7 committee before Senate Bill 14 had been reported by a  
8 committee, then on the Regular Order of Business, that  
9 bill would have been above Senate Bill 14 on second  
10 reading.

11 Q. And were any bills reported by a Senate  
12 committee before SB 14 was reported by the Committee of  
13 the Whole?

14 A. No.

15 Q. And what did you mean when you said that there  
16 was no parliamentary interaction between the Blocker  
17 Bill and SB 14?

18 A. I am not even sure when the Blocker Bill was  
19 filed. If it was filed on or before January 26th, it  
20 wasn't reported. It just would have existed a bill that  
21 was filed. For purpose of the calendar, a blocker bill  
22 would not have been part of the calendar unless it had  
23 been reported from committee. And on this date, a  
24 blocker bill had not been reported from committee, so  
25 there would have been no parliamentary interaction

132

1 between those two bills on the calendar.

2 Q. Were any bills considered in committee prior to  
3 the time that SB 14 was considered by the Committee of  
4 the Whole?

5 A. I don't believe that any actual bills were  
6 considered by committees before voter ID was considered  
7 by the Committee of the Whole.

8 Q. So now we have looked at four bills that  
9 concerned voter identification requirements. For any of  
10 those four bills, are you aware of what the source of  
11 the legislative language in such bills was?

12 A. The source?

13 Q. Well, for any of the four bills we have looked  
14 at today, do you know who drafted those bills?

15 A. No, I don't.

16 Q. Were you present for the floor debate upon SB  
17 14?

18 A. Yeah.

19 Q. Were you present for the consideration of SB 14  
20 in the Committee of the Whole?

21 A. For most of it, yes.

22 Q. Are you aware of any analysis showing how many  
23 Texas registered voters lack the required forms of  
24 identification under SB 14?

25 A. I wouldn't remember hardly any specifics of the

133

1 substantive debate on Senate Bill 14.  
 2 Q. Were you aware --  
 3 A. I don't remember.  
 4 Q. Excuse me. Were you aware or are you aware of  
 5 any concerns that SB 14 would disproportionately impact  
 6 racial minorities or ethnic minorities in Texas?  
 7 MR. FREDERICK: I object on the basis of  
 8 privilege, to the extent that this would require you to  
 9 reveal any statements by a legislator or any legislators  
 10 thought process.  
 11 I instruct you not to answer.  
 12 If you can answer without revealing those  
 13 matters, you may do so.  
 14 A. I am sure the public record indicates the  
 15 substance of the debate. I really would not be able  
 16 to -- I don't remember specifically arguments that were  
 17 made. Those were -- I am sure those were made on the  
 18 public record but I don't have a recollection of how  
 19 those arguments were made or what was said.  
 20 Q. Who made the decision as to when SB 14 would be  
 21 considered by the Committee of the Whole?  
 22 A. I think that decision was made by the  
 23 Lieutenant Governor and probably the Chair of the  
 24 Committee of the Whole, Senator Duncan.  
 25 MS. BERKOWER: What was the question? I

134

1 didn't hear it.  
 2 (Last question read back.)  
 3 Q. (By Mr. Harris) Did you have any discussions  
 4 with Lieutenant Governor or Senator Duncan regarding  
 5 when SB 14 would be considered by the Committee of the  
 6 Whole?  
 7 A. Yes.  
 8 Q. Did you have -- well, did you have discussions  
 9 individually with Senator Duncan and Lieutenant Governor  
 10 or were these joint discussions?  
 11 A. Probably individually and joint.  
 12 Q. How many times did you discuss the timing of  
 13 the consideration of SB 14 in the Committee of the Whole  
 14 with the Lieutenant Governor?  
 15 A. I -- I don't remember the number of times. I  
 16 don't think it was many times but --  
 17 Q. How many times did you discuss the timing of  
 18 the consideration of the Bill with Senator Duncan?  
 19 A. I don't remember the exact number.  
 20 Q. Was it more than one?  
 21 A. It would have been more than one, yes, it was.  
 22 Q. Are you familiar with the Voting Rights Act?  
 23 A. Not very.  
 24 Q. Are you familiar with the term "legislative  
 25 intent" or "legislative purpose"?

135

1 A. Yes.  
 2 Q. What do you understand either -- either or both  
 3 of those terms to mean?  
 4 MR. FREDERICK: Objection, calls for a  
 5 legal conclusion. Objection, relevance.  
 6 You may answer, if you can.  
 7 A. You know, I think that's a -- too broad of a  
 8 question to answer, it could mean different things for  
 9 different purposes.  
 10 Q. (By Mr. Harris) Is it always possible to tell  
 11 why the Legislature is enacting a piece of legislation  
 12 just by reading the bill itself?  
 13 MR. FREDERICK: Objection, calls for a  
 14 legal conclusion. Objection, calls for speculation.  
 15 Objection, relevance.  
 16 You may answer, if you can.  
 17 A. Can you reread the question.  
 18 (Last question read back.)  
 19 A. I think, generally, you can always tell by  
 20 reading a bill what the intent of the legislature was.  
 21 There are probably certain provisions in bills that may  
 22 be more difficult to determine and may require more  
 23 information.  
 24 Q. Have you ever known it to be the case that,  
 25 putting aside any particular piece of legislation, have

136

1 you ever known it to be the case that the Legislature is  
 2 enacting a bill for reasons that are not apparent on the  
 3 face of the bill?  
 4 MR. FREDERICK: Objection, relevance.  
 5 Objection, calls for speculation.  
 6 A. I couldn't recall anything specifically, no.  
 7 Q. (By Mr. Harris) The public debates that the  
 8 Senate has, either on the floor or in committee, those  
 9 are reported to the -- to the public very -- via various  
 10 means; is that right?  
 11 A. Yes.  
 12 Q. Do you think it is always the case that, in  
 13 debate, senators express all of their reasons why they  
 14 are in favor or in opposition to a bill?  
 15 MR. FREDERICK: Objection, calls for  
 16 speculation. Objection, relevance.  
 17 You may answer, if you can.  
 18 A. I -- I am not a member. I don't know why they  
 19 would -- what their comments mean when they -- I take it  
 20 at face value.  
 21 Q. Have you ever known it to be the case --  
 22 putting aside any particular bill, have you ever known  
 23 it to be the case that a legislator has particular  
 24 reasons for supporting or opposing a bill that that  
 25 legislator does not express in the public debate?

<p style="text-align: center;">137</p> <p>1 MR. FREDERICK: Objection, relevance.</p> <p>2 Objection, calls for speculation. Objection, vague.</p> <p>3 A. I think your questions are really broad and</p> <p>4 would require me to presume to know why members do what</p> <p>5 they do, and I am certainly no expert in knowing why</p> <p>6 members do what they do all of the time.</p> <p>7 Q. Well, if it were possible to tell all of the</p> <p>8 reasons why a member was for or against a bill from the</p> <p>9 public debate, then you really wouldn't have to assume</p> <p>10 anything, isn't that right?</p> <p>11 MR. FREDERICK: Objection, vague.</p> <p>12 Objection, calls for speculation. Objection, calls for</p> <p>13 a legal conclusion. Objection, relevance.</p> <p>14 A. I am not even sure how to answer your question</p> <p>15 and what you're asking.</p> <p>16 Q. (By Mr. Harris) Well, I think you said</p> <p>17 previously that answering my prior question would</p> <p>18 require you to assume what are members thinking.</p> <p>19 And I am just asking if -- if the public</p> <p>20 debate on a bill contained all of the reasons why a</p> <p>21 senator was for or against the bill, then that sort of</p> <p>22 assumption wouldn't be required.</p> <p>23 Do you agree with that?</p> <p>24 MR. FREDERICK: Objection, relevance.</p> <p>25 Objection, assumes facts not in evidence. Objection,</p>	<p style="text-align: center;">139</p> <p>1 of you?</p> <p>2 A. Yes.</p> <p>3 Q. For what purposes do you have to use your state</p> <p>4 ID, your state employee ID?</p> <p>5 A. To obtain access to the Capitol building, to</p> <p>6 Capitol parking.</p> <p>7 Q. Are there areas of the Capitol that you can</p> <p>8 access with your ID that you wouldn't be able to access</p> <p>9 otherwise?</p> <p>10 A. Well, yes. You know, I don't -- without an ID,</p> <p>11 there are certain elevators that you may not be able to</p> <p>12 use, there are certain tunnels, other buildings in the</p> <p>13 Capitol complex that you cannot access.</p> <p>14 Q. Do you have to show your State employee ID to</p> <p>15 get onto the floor of the Senate?</p> <p>16 A. I don't.</p> <p>17 Q. Is that because the security people there know</p> <p>18 you from your many years of service to the State or is</p> <p>19 it -- does nobody have to show an ID to go to the floor?</p> <p>20 MR. FREDERICK: Objection, form.</p> <p>21 A. We have admissions procedures on the Senate</p> <p>22 floor. And while we are in session, legislative</p> <p>23 employees would have -- for the most part, unless they</p> <p>24 have a position like I do, would have to show what we</p> <p>25 call "a floor pass" to obtain -- to be able to be on a</p>
<p style="text-align: center;">138</p> <p>1 vague. Calls for speculation.</p> <p>2 A. I don't want to speculate on why a member says</p> <p>3 or doesn't say anything about a particular bill on the</p> <p>4 record, in the public record.</p> <p>5 Q. (By Mr. Harris) Do you have any reason to</p> <p>6 believe that SB 14 will disproportionately impact</p> <p>7 racial, ethnic, or language minorities in Texas?</p> <p>8 MR. FREDERICK: Objection, relevance.</p> <p>9 Objection, calls for speculation.</p> <p>10 Also, object on legislative privilege, the</p> <p>11 extent it would call her to reveal any privileged</p> <p>12 communications, so object to the extent it calls for a</p> <p>13 legal conclusion.</p> <p>14 A. I don't know.</p> <p>15 Q. (By Mr. Harris) Do you have any understanding</p> <p>16 as to the number of racial or ethnic voters in Texas --</p> <p>17 excuse me -- of racial or ethnic minority voters in</p> <p>18 Texas that lack the required forms of ID under SB 14?</p> <p>19 MR. FREDERICK: Objection, relevance.</p> <p>20 A. I do not know.</p> <p>21 Q. (By Mr. Harris) What forms of ID do you care</p> <p>22 you with you or do you have with you today?</p> <p>23 A. Would have my driver's license and my state ID,</p> <p>24 my state employee ID.</p> <p>25 Q. Does your state employee ID contain a picture</p>	<p style="text-align: center;">140</p> <p>1 Senate Floor.</p> <p>2 Q. (By Mr. Harris) Are there times that the</p> <p>3 Capitol building is closed to the general public but</p> <p>4 that -- well, I will ask that question. Are there times</p> <p>5 that the Capitol building is closed to the general</p> <p>6 public?</p> <p>7 A. I am not really aware of what the security</p> <p>8 measures for the Capitol building are outside of my</p> <p>9 access to the Capitol building.</p> <p>10 Q. Do you own a copy of your birth certificate?</p> <p>11 A. I think I do, yes. Well, I think I do.</p> <p>12 Q. Were you born here in Texas?</p> <p>13 A. No.</p> <p>14 Q. What state were you born in?</p> <p>15 A. I was born in Argentina.</p> <p>16 Q. Assuming you didn't have a copy of your birth</p> <p>17 certificate or if you lost your birth certificate, would</p> <p>18 you know how to obtain another copy from Argentina?</p> <p>19 MR. FREDERICK: Objection, calls for</p> <p>20 speculation.</p> <p>21 A. I am not sure I would. I would probably call</p> <p>22 my family there and ask them to go get me a copy of my</p> <p>23 birth certificate.</p> <p>24 Q. (By Mr. Harris) And do you have any idea how</p> <p>25 long that process would take to obtain a copy of your</p>

141

1 birth certificate from Argentina?  
 2 A. I don't know.  
 3 Q. Do you know how much it would cost to obtain a  
 4 copy of your birth certificate from Argentina?  
 5 A. I don't know.  
 6 Q. Are you aware of any instances of in person  
 7 voter fraud -- actually, let's step back.  
 8 Are you familiar with a term called "in  
 9 person voter fraud"?  
 10 A. I have heard the term used.  
 11 Q. As I am using the term, I am asking you about  
 12 instances in which an individual has appeared at the  
 13 polls to vote claiming to be a registered voter, that  
 14 that individual is not. Does that -- does that make  
 15 sense?  
 16 A. Yes.  
 17 Q. And are you aware of any instances of in person  
 18 voter fraud in Texas?  
 19 A. I am not aware of very much having to do with  
 20 the actual election procedures used in administering  
 21 elections in Texas.  
 22 Q. And just so the record is clear, I take that to  
 23 mean you are not aware of any instances of in person  
 24 voter fraud in Texas?  
 25 MR. FREDERICK: Objection,

142

1 mischaracterizes the testimony. Objection, relevance.  
 2 A. I would have no direct knowledge of any  
 3 instances.  
 4 Q. (By Mr. Harris) Do you have any indirect  
 5 knowledge of instances of in person voter fraud in  
 6 Texas?  
 7 MR. FREDERICK: Objection, relevance.  
 8 A. Probably not. If it's -- someone has mentioned  
 9 it or discussed it, or if it's been mentioned in debate,  
 10 it's possible, but I don't have any knowledge really in  
 11 specific incidences.  
 12 MR. HARRIS: Let's take a five minute  
 13 break, after which I expect to be able to wrap up my  
 14 questioning very shortly.  
 15 (Brief recess.)  
 16 Q. (By Mr. Harris) Ms. Davis, I really do  
 17 appreciate your time today, and I do have just a very  
 18 few more questions.  
 19 Other than SB 14, what other bills have  
 20 been referred to the Committee of the Whole Senate as  
 21 opposed to a standing committee?  
 22 MR. FREDERICK: Objection, vague.  
 23 Q. (By Mr. Harris) Do you understand my question?  
 24 A. I do. But I don't think you have been specific  
 25 enough. Are you asking me about a particular session or

143

1 time?  
 2 Q. Well, let's say since you have been  
 3 Parliamentarian, since 2004. We have talked about the  
 4 fact that SB 14 sent to the Committee of the Whole, what  
 5 other bills went to the Committee of the Whole as  
 6 opposed to a regular standing committee of the Senate?  
 7 A. I believe in 2004, the Senate used the  
 8 Committee of the Whole -- I think it was 2004, for  
 9 school finance legislation. I don't remember if it was  
 10 couple bills or how many bills but --  
 11 Q. And besides school finance, since 2004, are you  
 12 aware of any other times when a bill was referred to the  
 13 Committee of the Whole, putting aside SB 14?  
 14 A. 2009, I believe, Senate Bill 362 was  
 15 referred --  
 16 Q. And SB 3 --  
 17 A. -- also. Sorry.  
 18 Q. Excuse me. As we talked about before, SB 362  
 19 was also a voter identification bill; is that right?  
 20 A. Yes.  
 21 Q. Beyond school finance in 2004, SB 362 in 2009,  
 22 SB 14 in 2011, since you became Parliamentarian, are you  
 23 aware of any other times when bills were referred to the  
 24 Committee of the Whole Senate?  
 25 A. I don't remember having had any other bills in

144

1 the Committee of the Whole.  
 2 Q. Finally, looking back at --  
 3 A. At that time, I am sorry, for that time period.  
 4 Q. Looking back at Exhibit 17, which is the  
 5 legislative history for SB 14 and, specifically, looking  
 6 at -- it's like Page 6 of 9.  
 7 A. Okay. Okay.  
 8 Q. Am I correct that this history reflects that SB  
 9 14 passed a vote of the full Senate and was reported  
 10 engrossed on January 26th, 2011?  
 11 A. Yes.  
 12 Q. And I think we already established that SB 14  
 13 was filed in the Senate on January 12th, 2011?  
 14 A. Yes.  
 15 Q. So if my math is right, that would mean that SB  
 16 14 passed exactly two weeks or 14 days passed the  
 17 Senate, excuse me, two weeks or 14 days after it was  
 18 filed in the Senate?  
 19 A. Your math -- your math sounds correct to me.  
 20 Q. Are you since becoming Parliamentarian in 2004  
 21 are you aware of any other bills that passed the Senate  
 22 within the first two weeks of the session?  
 23 A. Yes. I believe, in particular, during special  
 24 sessions, the Senate would have very quickly passed  
 25 bills.

145

1 Q. How about in Regular Session?  
 2 Are you aware of any other times where a  
 3 bill passed in the first two weeks of a Regular Session?  
 4 A. I am sure it has happened. I don't recall  
 5 anything specific. I am -- you know, I am sure it has  
 6 happened before with emergencies during a Regular  
 7 Session that would be a likely result.  
 8 Q. But sitting here today, you don't recall any  
 9 particular bills that passed within the first two weeks?  
 10 A. Nothing specific.

11 MR. HARRIS: At this time, the Texas  
 12 League has no further questions. We would reserve the  
 13 right to reopen the deposition subject to potential  
 14 motions concerning some of the privilege issues and  
 15 would, otherwise, turn our time over to the Department  
 16 of Justice and the Attorney General for any questions  
 17 that the Attorney General may have.

## EXAMINATION

19 BY MS. BERKOWER:

20 Q. Good afternoon, Ms. Davis.  
 21 My name is Risa Berkower, to refresh your  
 22 memory, and I represent the Attorney General Eric Holder  
 23 in this case.  
 24 So I will be asking you some questions  
 25 now. I think at the beginning of the day, Mr. Harris

146

1 went over some ground rules with you. And I will just  
 2 go over a few of mine as well just be clear.  
 3 I will do my best to ask you clear  
 4 questions. But if you don't understand a question, will  
 5 you let me know?  
 6 A. Yes.  
 7 Q. And I may use the terms "voter ID" and "voter  
 8 ID" interchangeably during the deposition but I think  
 9 you would interpret the term broadly to mean a  
 10 requirement that a voter presents a form of  
 11 identification, whether it has a photo or otherwise,  
 12 when voting in person before being permitted to vote by  
 13 regular ballot.  
 14 Does that make sense?  
 15 A. Yes.  
 16 Q. And if I refer to "minority voters," I mean  
 17 voters who are non-white or non-Anglo, does that make  
 18 sense?  
 19 A. Yes.  
 20 Q. So again, if you have any questions about  
 21 anything that I say, I would like you to interject; is  
 22 that alright?  
 23 A. Yes.  
 24 Q. So I think you have been asked a lot of  
 25 questions about the duties that you have as Senate

147

1 Parliamentary. And I am going to focus on your time  
 2 as Parliamentary. If I ask a question that asks for a  
 3 question outside of the time you served as  
 4 Parliamentary, I will specify that, okay?  
 5 A. Okay.  
 6 Q. Could you, as a general matter, explain the  
 7 role and duties of the Parliamentary in the Senate.  
 8 MR. FREDERICK: That's asked and answered  
 9 You may answer.  
 10 A. Generally, the Parliamentary is a or Senate  
 11 officer is responsible for advising the presiding  
 12 officer and the members of the Senate on the rules and  
 13 procedures of the Senate.  
 14 Q. (By Ms. Berkower) And when you say, "rules and  
 15 procedures," is the advice that you -- how do you give  
 16 advice, is it requested of you or do you volunteer it  
 17 yourself?  
 18 A. Probably a lot of both on a day-to-day basis.  
 19 Q. What are the circumstances in which you  
 20 volunteer advice on rules of procedure, like, on your  
 21 own initiative?  
 22 A. You know, on a day-to-day basis in the Senate,  
 23 I prepare -- well, I sit next to the presiding officer,  
 24 and I prepare items for consideration. For example, you  
 25 know, I might -- I prepare a script for the opening of

148

1 the Senate depending on what we are doing -- to make  
 2 sure we follow the rules, it would include an  
 3 introduction of the Pastor for the day. If there is  
 4 someone who is absent and has requested to be excused,  
 5 would have a motion prepared for the presiding officer  
 6 to read. Sometimes these are motions in writing,  
 7 usually. Or I would have -- I would help cue for the  
 8 providing officer on various requests from the  
 9 membership to be recognized for introduction of guests,  
 10 ceremonial resolutions, memorial resolutions,  
 11 announcements. And that's just within the beginning of  
 12 the business of the Senate.  
 13 When we have moved on to the actual  
 14 calendar, my job is to coordinate when bills are  
 15 actually taken up, the timing to make sure that they are  
 16 in order for the debate that would require me to order,  
 17 review amendments, you know, kind of just, you know,  
 18 things like, you know, if a member is ready to be  
 19 recognized on a certain bill, making sure that the  
 20 members on the floor and that any members who have filed  
 21 amendments are available. And I am very heavily  
 22 involved in when bills are taken up, depending on our  
 23 schedule, our, you know, perhaps the intentions of how  
 24 long we are going to be there. So I -- I would say the  
 25 large part of my job is coordinating the actual business



149

1 of the Senate while we are in session.  
 2 Q. So is it fair to say that you -- you ensure  
 3 that the Senate's business is conducted according to the  
 4 rules of the Senate on a day-to-day basis or you provide  
 5 advice.  
 6 A. Yes. I provide advice and help accommodate  
 7 that.  
 8 Q. And then there are, also, instances -- that's  
 9 when you voluntarily give advice on the rules, is that  
 10 accurate?  
 11 A. Yes. That's accurate because times motions  
 12 aren't in order at particular times of the day, things  
 13 of that nature, and I would, you know, to the extent  
 14 that a member wants to do something at certain time, I  
 15 would voluntarily say, we cannot do that at this time,  
 16 we can take this up later; or I would, you know,  
 17 coordinate with the member and the presiding officer  
 18 when we would assume certain activities for the Senate.  
 19 Q. And then there are, also, times when people ask  
 20 your advice on the rules, is that accurate?  
 21 A. Yes.  
 22 Q. When are those times, just generally?  
 23 MR. FREDERICK: Object to vague. You may  
 24 answer.  
 25 Q. (By Ms. Berkower) Do you want me to be more

150

1 specific?  
 2 A. Yes. I think that would be helpful.  
 3 Q. Okay. When you're in session, do members of  
 4 the Senate ask your advice on rules?  
 5 A. Yes.  
 6 Q. When you're not -- when you're not meeting,  
 7 when the Senate is not in session, do the members ask  
 8 your advice on rules?  
 9 A. Yes.  
 10 Q. Does anyone else other than members of the  
 11 Senate ask your advice on rules?  
 12 A. Yes.  
 13 Q. Who else asks your advice on rules?  
 14 A. The staff for the members in the Senate,  
 15 committee staff, in particular, staffers for senators,  
 16 sometimes House members. Also, most -- the presiding  
 17 officer would ask for my advice. Sometimes members of  
 18 the public would ask.  
 19 Q. Are you allowed to give members of the public  
 20 advice on the rules?  
 21 A. Yes. I think, general advice, I think it is  
 22 expected that I would be help people with general  
 23 advice.  
 24 Q. What do you do -- I want to just get this out  
 25 of the way as well. What do you do when the Senate is

151

1 not in session, as the Parliamentarian?  
 2 A. Do you mean when we are outside of a Regular  
 3 Session --  
 4 Q. When --  
 5 A. -- or just day-to-day?  
 6 Q. I guess when you're outside a Regular Session,  
 7 what -- just a quick summary of what you do when the  
 8 Legislature is not meeting.  
 9 A. Okay. I still answer questions. Probably more  
 10 of my work comes from committees that are meeting  
 11 throughout the interim. I would give advice on how they  
 12 might post for hearing. Sometimes I would be asked  
 13 specifics about how to post. There is a large number of  
 14 questions that can come into play with committees  
 15 meeting during the interim and outside of the  
 16 legislative session.  
 17 Aside from assisting staff and members  
 18 outside of the session, what I would do is perform a lot  
 19 of research in anticipation of an upcoming session and  
 20 generally prepare for anything that I think might come  
 21 before the body.  
 22 Q. How do you know what areas to research that  
 23 might become of interest during the session?  
 24 A. I -- you know, sometimes I -- you can tell just  
 25 by what could happen. You know, a good example of that

152

1 is, we have a potential vacancy in an office. You know,  
 2 I would research how that vacancy might be filled and  
 3 sort of anticipate what the Senate might need from me  
 4 and what they might need to conduct their business.  
 5 Q. Do you ever research potential rule changes for  
 6 future sessions?  
 7 A. Yes. Sometimes, I mean, you know, I have  
 8 certainly been asked questions about possible changes  
 9 and, you know, sometimes I think after you have gone  
 10 through a session, things come up that were  
 11 unanticipated and I might research those questions  
 12 further and they sometimes may or may not turn into  
 13 rules changes.  
 14 Q. I think you had discussed a rule change with  
 15 Mr. Harris earlier, Rule 5.11(d), which was changed in  
 16 2009, do you remember testifying about that?  
 17 A. Yes.  
 18 Q. Did you conduct any research on that rule  
 19 change prior to its institution?  
 20 A. Prior to the time it was adopted by the Senate?  
 21 Q. Yes.  
 22 A. Yes.  
 23 Q. Did you conduct any research before it was  
 24 introduced?  
 25 A. Yes.



153

1 Q. Were you asked to conduct that research?  
 2 A. Some of it, yes. And some of it, I would have  
 3 done on my own anyways.  
 4 Q. Why -- what do you mean, you would have done it  
 5 on your own anyways?  
 6 A. You know, it is my job to know the rules and  
 7 how they work and so I regularly research a lot to be  
 8 prepared for a lot of different situations, and so I  
 9 might not have specifically researched that provision  
 10 but I would have done a lot of research about and have  
 11 done a lot of research about special orders and,  
 12 certainly, previous rules of the Senate.

13 Q. Who asked you to conduct the research?  
 14 MR. FREDERICK: I will object on the basis  
 15 of privilege. We have already established what the  
 16 subject matter of the research would be, so this would  
 17 be calling for the substance of request Parliamentary  
 18 about a legislative act.  
 19 I am instructing you not to answer on the  
 20 basis of privilege.  
 21 MS. BERKOWER: Can I ask you a question  
 22 about that, Matt?  
 23 MR. FREDERICK: Of course.  
 24 MS. BERKOWER: I think she said she had  
 25 conducted research on special orders. So can I ask her

154

1 who asked her to conduct research on special orders?  
 2 MR. FREDERICK: I thought the question was  
 3 whether she conducted research in connection with Rule  
 4 5.11(d).  
 5 MS. BERKOWER: I did ask her that, she  
 6 said -- I think she said she did research. And then she  
 7 said -- I asked what the nature of that research was, I  
 8 thought she said it was on special orders generally. If  
 9 you want, I can just drop it. But I didn't think it was  
 10 as specific as I think maybe you thought it was.  
 11 MR. FREDERICK: I think -- yeah. I mean,  
 12 I think because of -- because of the predicate  
 13 questions, I think identifying who made the request  
 14 would have the effect of reviewing privileged  
 15 communication.  
 16 Q. Okay. And can I ask you -- well, actually, I  
 17 will just move on from there.  
 18 Can you explain the relationship, as a  
 19 general matter, of the Parliamentary in the Senate  
 20 with Lieutenant Governor?  
 21 A. As a general matter -- matter, the  
 22 Parliamentary is a Senate Officer. I am designated in  
 23 what's called "the Caucus Resolution" for the Senate. I  
 24 am designated as an Office along with the other  
 25 officers. The Senate names, the other officers, and

155

1 then provides that the Lieutenant Governor appoint the  
 2 Parliamentary.  
 3 The Lieutenant Governor makes a decision  
 4 as to who the Parliamentary would be and indicates  
 5 that to the Senate and then the Senate adopts his  
 6 appointment in a resolution making the Senate officer.  
 7 I take an oath, along with the other offices on the  
 8 Senate Floor. So I think because of my appointment by  
 9 the Lieutenant Governor and because his role of the  
 10 presiding officer, in large part, it is my job to advise  
 11 him on the rules of procedure, particularly, given his  
 12 authority under the Senate rules to decide questions of  
 13 order.  
 14 Q. Is there more you wanted to add?  
 15 A. I don't think so, on a day-to-day basis, that's  
 16 what I do is advise the presiding officer and the  
 17 members of the Senate.  
 18 Q. Is it the usual case that the Parliamentary  
 19 will retain that position longer than one legislative  
 20 session?  
 21 A. I think in recent practice, it is.  
 22 Q. Is it the usual practice that a Parliamentary  
 23 will retain the position after a new lieutenant governor  
 24 comes in?  
 25 A. I think the recent practice is that we have had

156

1 parliamentarians work for multiple lieutenant governors  
 2 Q. And you said that you provide advice. To be  
 3 clear, is that purely procedural advice?  
 4 A. I think -- I don't know if I would use the word  
 5 "purely," I am not sure what you mean. But I think, in  
 6 general, it is procedural advice.  
 7 Q. Does the procedural advice ever impact -- have  
 8 a subsequent impact on a bill?  
 9 MR. FREDERICK: Objection, vague.  
 10 Objection, calls for speculation.  
 11 You may answer.  
 12 A. I -- I think there can be substantive impacts  
 13 based on parliamentary rulings that the presiding  
 14 officer would make.  
 15 Q. What types of rulings would those be, where  
 16 that impact occurs?  
 17 MR. FREDERICK: Objection, vague.  
 18 You may answer.  
 19 A. An example would be germaneness might affect  
 20 the actual bill, based on parliamentary standards.  
 21 Q. (By Ms. Berkower) What is "germaneness"?  
 22 A. "Germaneness" is a requirement in the Senate  
 23 Rules that the bills be germane to the subject matter of  
 24 the bill.  
 25 Q. So is it about the -- would it be similar to

157

1 like a relevancy requirement?  
 2 A. I am not sure what you would mean by "relevancy  
 3 requirement."  
 4 Q. Okay. What's a definite -- what's the  
 5 definition of "germane"?  
 6 A. I mean, I think we can read the rule. Would  
 7 you like for me to read the rule to you?  
 8 Q. Sure. Do you have it, the 2011 rules?  
 9 MR. FREDERICK: I think we have all --  
 10 Q. (By Ms. Berkower) I have the whole 2011 rule.  
 11 Do you know which one it is off the top of  
 12 your head?  
 13 A. It is 715 and it would be the same in 209.  
 14 Q. Okay.  
 15 A. So Senate Rule 715 reads: "No motion or  
 16 proposition on a subject different from that under  
 17 consideration shall be admitted under color of amendment  
 18 or as a substitute for a motion or proposition under  
 19 debate."  
 20 Q. And that's one of the areas where you have made  
 21 rulings that you feel may have had a substantive impact  
 22 on a bill?  
 23 A. Where I would have provided the Lieutenant  
 24 Governor or the Presiding Officer the time with advice  
 25 as to whether an amendment to a Bill is germane or not

158

1 germane and whether their decision would affect a bill,  
 2 this would be the case.  
 3 Q. And I guess that's a good point. You advise  
 4 the Lieutenant Governor. You don't make rulings  
 5 yourself, is that accurate?  
 6 A. Yes.  
 7 Q. Are any of the -- is any of the advice that you  
 8 provide to the Lieutenant Governor publicly available?  
 9 A. No, I don't think it is.  
 10 Q. Maybe I should have been more specific. I know  
 11 the House Parliamentarian sometimes publishes, or I was  
 12 told that yesterday by the other Ms. Davis, that there  
 13 are some ruling papers that the House Parliamentarian  
 14 may issue from time to time, is that something that  
 15 happens in the Senate as well?  
 16 A. I don't issue ruling papers. I certainly may  
 17 assist and may even draft a ruling with the Lieutenant  
 18 Governor that is entered into the journals but those  
 19 would be the Presiding Officer's ruling.  
 20 Q. Okay.  
 21 A. And there are never a ruling of the  
 22 Parliamentarian directly.  
 23 Q. So the Lieutenant Governor is not bound to take  
 24 your advice, is that accurate?  
 25 A. That's accurate.

159

1 Q. Does the -- does the Lieutenant Governor, as a  
 2 general matter, take the advice of a Parliamentarian?  
 3 MR. FREDERICK: Objection, vague.  
 4 You may answer.  
 5 A. Probably, yes.  
 6 Q. (By Ms. Berkower) I think you said a few  
 7 minutes ago that you were heavily involved in when bills  
 8 are taken up. Does that mean when they are taken up for  
 9 a vote?  
 10 A. Yes. When they are laid out for consideration  
 11 in the Senate.  
 12 Q. What is your involvement in that when bills are  
 13 taken up for -- or laid out for a vote?  
 14 A. You know, sometimes it is very significant and  
 15 sometimes it is not that significant.  
 16 You know, just depends on the time of the  
 17 session as to how much work that is. It's -- for  
 18 example, if the Senate is considering, you know, 40  
 19 bills during the day, I would probably be -- I am very  
 20 heavily involved in determining when those bills would  
 21 be brought up and when they are ready for consideration.  
 22 Q. Well, what factors make a bill ready for  
 23 consideration?  
 24 A. Well, aside from their procedural stance as to  
 25 whether they are eligible for consideration on a

160

1 day-to-day basis, factors would be, such as, if the  
 2 author is present or available when he is ready, if he  
 3 has his notes ready, if there are amendments, if those  
 4 amendments are in order and I have time to order them or  
 5 prepare them and be ready. Sometimes amendments are  
 6 submitted that are not properly drafted and would be  
 7 confusing for the membership. So I would delay  
 8 consideration of a bill at that point until we have been  
 9 able to work with the author of the amendment and,  
 10 perhaps, even the author of a bill in getting the bill  
 11 ready for consideration. This is really, largely,  
 12 logistical.  
 13 Q. Is the Parliamentarian and the Senate averse  
 14 with the development of legislation?  
 15 MR. FREDERICK: Object as vague. But you  
 16 may answer.  
 17 A. Generally, no.  
 18 Q. (By Ms. Berkower) Are there exceptions?  
 19 MR. FREDERICK: Object to the form.  
 20 You may answer.  
 21 A. I -- you know, I have assisted members in  
 22 developing legislation related to constitutional  
 23 procedures. With regards to legislation in general, I  
 24 have been asked to assist and germaneness is sometimes  
 25 not well understood and so I may be asked from time to

161

1 time to help a member with their amendment draft. But  
 2 generally, I am not involved in the substance of the  
 3 legislation.  
 4 Q. (By Ms. Berkower) Do members use you as a  
 5 resource for parliamentary procedures when they are  
 6 drafting legislation?  
 7 A. Yes.  
 8 Q. Was there any assistance that you provided any  
 9 Senate members who were working on voter ID legislation?  
 10 MR. FREDERICK: Object as vague.  
 11 You may answer.  
 12 A. What kind of assistance, if you said, I  
 13 didn't -- I don't remember.  
 14 Q. (By Ms. Berkower) Well, I think that the  
 15 problem is, I am going to run into an objection if I  
 16 asked very specific questions about what type of  
 17 assistance you provided. So I am trying to find out if  
 18 you provided legislators with assistance in their  
 19 developing voter ID legislation without revealing the  
 20 substance of what you provided, if you did?  
 21 MR. FREDERICK: Same objection.  
 22 You may answer.  
 23 Q. (By Ms. Berkower) Do you understand the  
 24 question?  
 25 A. Yes, I think I do. I am having to -- what do

163

1 the substance of any of the debates on the voter ID  
 2 bills that Mr. Harris discussed with you today, is that  
 3 accurate?  
 4 A. Yes. I think that's accurate.  
 5 Q. With regard to the Committee of the Whole, I  
 6 think you testified earlier that, there is a benefit  
 7 that the hearing will be heard by all senators, is that  
 8 accurate?  
 9 A. Yes.  
 10 Q. And is that because many bills never make it  
 11 out of committee to be heard by all senators?  
 12 A. No. I think at the committee level is before  
 13 bills are out of committee. So at committee level, you  
 14 could have a bill in any number of committees. It is  
 15 rare that every member of the Senate would be a member  
 16 of all the committees. So a great advantage of the  
 17 Committee of the Whole is that all 31 members have the  
 18 equal right to participate in a committee deliberation  
 19 of a particular piece of legislation.  
 20 Q. And --  
 21 A. Otherwise, they might not be present for a  
 22 hearing.  
 23 Q. And is it accurate to say that, once a Bill is  
 24 out of committee, any changes of the bill have to go  
 25 through a more formal process?

162

1 you mean by "legislation"?  
 2 Q. Well, okay, I will be more specific then.  
 3 Did you help any senators draft voter ID  
 4 bills that were filed in the Senate?  
 5 A. No.  
 6 Q. Did you help any senators develop voter ID  
 7 bills that were filed in the Senate?  
 8 MR. FREDERICK: Objection, vague.  
 9 You may answer.  
 10 A. No.  
 11 Q. (By Ms. Berkower) Did you help any senators  
 12 develop amendments to voter ID bills?  
 13 MR. FREDERICK: Objection, vague. You may  
 14 answer.  
 15 A. I think develop, no.  
 16 Q. (By Ms. Berkower) Did you help any senators  
 17 draft amendments to voter ID bills?  
 18 A. I can't say -- I wouldn't remember. It's very  
 19 possible on the Senate floor, if somebody came up with  
 20 something they wanted to do at the last minute, I would  
 21 have helped them put the words on the paper. But  
 22 likely, I wouldn't -- would not have been heavily  
 23 involved in the drafting of amendments.  
 24 Q. So I think you were -- and you said, I just  
 25 want to make sure I understand this. You don't remember

164

1 A. Yes, in the Senate.  
 2 Q. In the Senate.  
 3 So if the -- if the Committee of the Whole  
 4 is meeting, is it easier then for all senators to have  
 5 an opportunity to make changes to a bill?  
 6 A. If the Committee of the Whole is meeting?  
 7 Q. Yes.  
 8 A. Yes. Yes.  
 9 Q. Is it possible to send a bill to the Committee  
 10 of the Whole without -- well, what is -- what is  
 11 required to send a bill to the Committee of the Whole?  
 12 A. I don't know that there are any specific  
 13 requirements. I think that the Lieutenant Governor can  
 14 refer a bill to the Committee of the Whole but, also,  
 15 the Senate, as a body, could commit a bill to the  
 16 Committee of the Whole itself.  
 17 Q. So there is no vote or anything required to  
 18 designate a bill as going to the Committee of the Whole,  
 19 is that accurate?  
 20 A. On referral by the presiding officer, no vote.  
 21 If the body were to commit a bill or re-refer, there  
 22 would be a vote.  
 23 Q. What do you mean by "re-refer"?  
 24 A. If they were to choose to remove a bill from  
 25 another committee and send it -- have it instead

165

1 considered in the Committee of the Whole, the body could  
 2 choose to do that.  
 3 Q. Does that happen often?  
 4 A. Re-referrals in general, you know, often it --  
 5 I would say it is not an infrequent occurrence for bills  
 6 to be re-referred by the body. I couldn't give you a  
 7 number.  
 8 Q. Is it fair to say that a referral to the  
 9 Committee of the Whole has no direct relationship to the  
 10 two-thirds rule for bills to be heard out of order?  
 11 A. I think that's probably fair to say that.  
 12 Q. Does the Committee of the Whole have strategic  
 13 benefits for bill passage?  
 14 A. Yes.  
 15 Q. What are those benefits?  
 16 A. I think that the biggest benefit is what I had  
 17 already stated earlier, is that when a Bill is  
 18 considered by the Committee of the Whole, the 31 members  
 19 are able to participate in that deliberative process.  
 20 And that is a benefit to the Senate as a whole. It, you  
 21 know, likely means that when a bill that has gone  
 22 through Committee of the Whole reaches the Senate Floor  
 23 for consideration, it's in better form in that it has  
 24 the input of the entire body. So it -- you know, as far  
 25 as collaboration and deliberation goes, you're going to

166

1 get a -- strategically, you're going to get a better  
 2 work-product out of the Committee of the Whole.  
 3 Q. Are there any procedures that would -- are  
 4 there any procedures bypassed by sending a bill to the  
 5 Committee of the Whole as opposed to a standing  
 6 committee?  
 7 A. "Bypass," what do you mean?  
 8 Q. Well, it sounds like, I think you have heard --  
 9 well, I wonder if, have you heard the Senate called "the  
 10 most deliberative body" or something of that sort?  
 11 A. Yes.  
 12 Q. What does that mean, or what do you take that  
 13 to mean?  
 14 A. Well, I mean the Senate having a fewer number  
 15 of members can and certainly subject to its  
 16 constitutional design with having longer terms, as much  
 17 as in the U.S. Constitution, I think it considers itself  
 18 more deliberate.  
 19 Q. And, also, are there -- is it procedurally a  
 20 little slower? Are there more procedures in place that  
 21 slow down bill passage?  
 22 A. That slow down bill passage.  
 23 Q. Or delay bill passage, more layers of  
 24 procedural.  
 25 A. I am not sure I would know how to answer that

167

1 compared to what?  
 2 Q. I guess, then, are there a number of procedures  
 3 layers that a bill must go through before it gets a  
 4 final vote on the Senate Floor?  
 5 A. Compared -- are you asking me more, compare it  
 6 Q. To the House.  
 7 A. No. Actually, I think -- well, this is -- I  
 8 think probably the Senate in many ways is simpler,  
 9 procedurally.  
 10 Q. Coming out of -- does a bill that comes out of  
 11 the Committee of the Whole, is it easier to get a vote  
 12 on the Senate Floor before the full Senate for that bill  
 13 than bills that come out of committees?  
 14 A. I am sorry. Please repeat your question.  
 15 Q. That was pretty convoluted. I will start over.  
 16 Is it easier to get a vote on a bill that  
 17 comes out of the Committee of the Whole than bills that  
 18 come out of other committees?  
 19 A. "Easier to get a vote."  
 20 Q. For final passage.  
 21 A. I don't know that it's easier, no.  
 22 Q. Is it a majority vote requirement to send a  
 23 bill out of the Committee of the Whole?  
 24 A. Yes. I would say it is a majority.  
 25 Q. For a bill to be sent out of a standing

168

1 committee, what's the -- is it, also, a majority vote  
 2 requirement?  
 3 A. It would be majority of the membership of the  
 4 committee.  
 5 Q. Right. That's what I meant. How are -- how  
 6 are those committees staffed?  
 7 A. The standing committees?  
 8 Q. Yes.  
 9 A. Under the rules, and -- okay. Under the rules,  
 10 the chairman of committees are empowered to hire the  
 11 staff for the committees, you know, and the Senate  
 12 Administration Committee approves budgets for the  
 13 individual committees that enables them to hire staff.  
 14 Q. I guess I meant, are you referring to, like,  
 15 staffers as opposed to members of the Senate?  
 16 A. Yes. And I am sorry, maybe I misunderstood  
 17 your question.  
 18 Q. That's okay. I should have been more specific.  
 19 How are senators assigned to committees?  
 20 A. Under the rules, they are appointed by the  
 21 Lieutenant Governor.  
 22 Q. Are there any requirements concerning  
 23 partisanship of how senators are staffed on committees?  
 24 A. No.  
 25 Q. Is it possible then for a committee to be all

173

1 your question.

2 Q. Is it true that under the usual rules of the  
3 Senate, to be heard out of order, a bill must have that  
4 approval by two-thirds majority of the senators?

5 A. Yes. For -- for a bill to be considered out of  
6 its regular calendar order, it requires a two-thirds  
7 vote of the members present and voting.

8 Q. So if a bill doesn't have to meet the  
9 two-thirds threshold to be considered out of order, is  
10 it more likely that it will be heard out of order?

11 A. If it doesn't have to be considered --

12 Q. Sorry.

13 A. -- with the suspension of the Regular Order of  
14 Business, is it more likely. Not necessarily. I think  
15 the Senate decides whether it follows its calendar or  
16 whether it takes bills out of order.

17 Q. Okay. I will rephrase it this way.

18 Is it procedurally easier for a bill to be  
19 heard out of order if it doesn't have to meet the  
20 two-thirds majority requirement?

21 A. Well,

22 MR. FREDERICK: Object to the form of the  
23 question. Object, assumes facts not in evidence. But  
24 you may answer.

25 A. If a Bill is taken out of order, it requires

174

1 two-thirds vote.

2 Q. (By Ms. Berkower) If a Bill is put into a  
3 special category, where it doesn't require a two-thirds  
4 vote to be heard out of order, would you say it is  
5 procedurally easier to get a vote on that bill?

6 MR. FREDERICK: Object. Assumes facts not  
7 in evidence. Objection, vague.

8 You may answer.

9 A. I -- is it easier to take up a bill that's not  
10 in the regular order, is that what you're asking me?

11 Q. (By Ms. Berkower) Let me think about this a  
12 second and I will rephrase it.

13 Okay. I think we -- you did say that,  
14 usually to be heard out of order, a two-thirds majority  
15 of senators must agree to that, right?

16 A. Yes.

17 Q. Would you agree that -- would you agree that if  
18 a bill only had to -- if to be heard out of order, a  
19 bill required only a majority vote of senators as  
20 opposed to two-thirds majority vote of senators, it may  
21 be easier to get that bill heard?

22 MR. FREDERICK: Objection, assumes facts  
23 not in evidence, vague, calls for speculation.

24 You may answer.

25 A. To get the bill heard.

175

1 Q. (By Ms. Berkower) A final vote.

2 A. I would agree that if a bill is not taken up  
3 with a two-thirds vote, I think by the math, it would be  
4 easier. I think getting 21 votes is harder, depending  
5 on the bill than getting 16.

6 Q. Is it fair to say, it is a reduced procedural  
7 threshold to require a simple majority rather than a  
8 two-thirds majority to have a vote -- to have a bill  
9 heard out of order?

10 A. Well, I --

11 MR. FREDERICK: Object. Assumes facts not  
12 in evidence. Calls for speculation.

13 You may answer.

14 A. I don't -- Senate calendars don't require -- I  
15 think the rules require that the body follow its orders  
16 of business. And if the body chooses to go out of order  
17 and -- that is -- you know, that does happen, then it is  
18 a two-thirds vote to take a bill up out of order. Is  
19 that easier than a majority vote for a bill that would  
20 be at the top of the calendar, you know, it is easier to  
21 get to a bill that's at the top of the calendar.

22 Q. (By Ms. Berkower) Would you agree that a  
23 simple majority is a lower threshold for going out of  
24 order than a two-thirds majority?

25 MR. FREDERICK: Object to the form.

176

1 Assumes facts not in evidence. You may answer the  
2 question.

3 A. I don't think you have a simple majority for  
4 going out of order. You have a simple majority for  
5 bills that are at the top of the calendar. And then to  
6 go out of order, you have a two-thirds vote.

7 Q. If you change the rule to be a simple majority  
8 to go out of order, would you agree that that's a lower  
9 threshold for going out of order than requiring a  
10 two-thirds majority to go out of order?

11 MR. FREDERICK: Objection, calls for  
12 speculation.

13 You may answer.

14 A. I think there is a distinction between going  
15 out of order and what your order actually is. And if it  
16 takes a majority vote to get a bill at the top of the  
17 calendar, that's a majority vote to get the bill at the  
18 top of the calendar. That bill wouldn't, if it's a  
19 special order, it is not part of the Regular Order of  
20 Business.

21 Q. (By Ms. Berkower) I see. So does Rule 5.11,  
22 essentially, do what you just described, 5.11(d), for  
23 voter ID permits the bill to be put at the top of the  
24 calendar based upon a simple majority?

25 A. Yes. I think it -- yes, it does permit a bill,



177

1 if there are other bills.  
 2 Q. Right. If there were other bills.  
 3 A. Right.  
 4 Q. But normally in order to be put out of order  
 5 and potentially put at the top of the calendar, it would  
 6 require a two-thirds vote; is that accurate?  
 7 A. To go out of order, yes.  
 8 Q. Would you agree that Rule 5.11(d) reduces the  
 9 threshold for consideration of voter ID legislation?  
 10 MR. FREDERICK: Objection, vague.  
 11 A. No.  
 12 Q. (By Ms. Berkower) Why not?  
 13 A. Because I think that is very dependent on the  
 14 factors that play, the time of the legis -- the timing  
 15 of the legislation, what other bills are on the  
 16 calendar. There is a lot of variables that come into  
 17 play.  
 18 Q. Okay. So let's actually talk about the timing.  
 19 So this bill was deemed emergency  
 20 legislation, correct, or this area of legislation was  
 21 deemed emergency legislation, is that accurate?  
 22 A. In 2011, yes.  
 23 Q. Do you know -- as a result when SB 14 was  
 24 considered, were there any other bills up for a vote  
 25 before the Senate at that time?

178

1 A. I don't think there were any other bills on the  
 2 calendar.  
 3 Q. And that was because it was the emergency  
 4 designation allowed the bill to be considered before  
 5 bills are normally allowed to be considered under Senate  
 6 rules, is that accurate?  
 7 A. Well, I mean, technically, it -- you know,  
 8 there had not been any bills reported from Committee, so  
 9 you could have a bill that's reported from Committee  
 10 without an emergency designation. But you know not --  
 11 you know, just depends on what part of the session  
 12 you're in.  
 13 Q. So turning back, I think it was exhibit --  
 14 Mr. Harris, what exhibit do you know?  
 15 MR. HARRIS: That was Exhibit 17.  
 16 Q. (By Ms. Berkower) 17 which was the legislative  
 17 history for Senate Bill 14.  
 18 The emergency designation allowed the bill  
 19 to be considered in the first 60 days of the legislative  
 20 session, is that accurate?  
 21 A. Yes.  
 22 Q. Was it in fact considered in the first 60 days  
 23 of the legislative session?  
 24 A. Yes.  
 25 Q. Are the only types of legislation that may be

179

1 taken up by the Senate during that time, the topics that  
 2 are designated in the emergency designation?  
 3 A. There is two ways. They can either be declared  
 4 an emergency or the Senate can suspend the  
 5 constitutional order of business for the four-fifths  
 6 vote to take up bills during the first 60 days.  
 7 Q. So is it safe to say that the emergency  
 8 designation ensured there would be fewer other bills up  
 9 for consideration at the time that the Senate would  
 10 consider voter ID legislation, if the Senate considered  
 11 voter ID legislation in those first 60 days?  
 12 A. I wouldn't use the word "ensured."  
 13 The Senate can choose to suspend the  
 14 constitutional order of business any time it chooses, so  
 15 it's -- I think the emergency designation has the  
 16 equivalent effect.  
 17 Q. When is the last time the Senate suspended the  
 18 normal order of rules as you just described?  
 19 A. The constitutional order of business?  
 20 Q. Yes.  
 21 A. You know, I -- it is possible that we did that  
 22 last session. I don't remember.  
 23 Q. Is it a common occurrence?  
 24 A. It -- I wouldn't comment, I don't know. It  
 25 used to be more common than it is. But I -- I don't

180

1 remember whether we did that for any bills last session.  
 2 Q. Well, is it safe to say, though, that  
 3 designating the voter ID as emergency legislation  
 4 ensured that there would not be a blocker bill ahead of  
 5 voter legislation when it came up for a full vote you?  
 6 A. No, it wouldn't have had -- it wouldn't have  
 7 affected the blocker bills ability to get on the  
 8 calendar other than -- no, not directly, no.  
 9 Q. Well, within the first 60 days, could the  
 10 blocker bill have gotten on the calendar in front of  
 11 voter ID legislation?  
 12 A. Within this first 60 days -- well, the blocker  
 13 could have been set any time the Senate chose to set it.  
 14 Q. How is that the case, though, if the Senate is  
 15 not allowed to consider bills other than emergency  
 16 legislation within the first 60 days?  
 17 A. Well, for something to be on the calendar, it  
 18 is not considered by the Senate it is merely reported by  
 19 committee.  
 20 Q. Okay.  
 21 A. We might have had a restriction. But it is,  
 22 also, always suspendable.  
 23 Q. Sorry, what was the last thing you said?  
 24 A. Again, outside of an emergency declaration, you  
 25 can, also, suspend the constitutional order of business.



181

1 Q. But the Senate didn't suspend the  
2 constitutional order of business in the first 60 days of  
3 the 2011 Legislature, did it?  
4 A. I don't know if it did for any other bills.  
5 It's entirely possible that it suspended the  
6 constitutional order of business for something.  
7 Q. Is designating legislation or emergency  
8 legislation one way to make it more likely that the  
9 Senate will hear a particular type of legislation for a  
10 full vote?  
11 A. Likely. I don't think it makes it more likely.  
12 I think maybe I answered the question earlier that  
13 perhaps the Senate could consider something sooner. But  
14 beyond the Governor declaring an emergency, the Senate  
15 wants -- wants to have to act on an emergency. So it  
16 doesn't necessarily make it more likely.  
17 Q. Well, if the Senate wants to act on a  
18 particular type of legislation and the Governor  
19 designates it as emergency legislation, does that make  
20 it -- does that remove obstacles for the bill to be  
21 heard before the Senate?  
22 MR. FREDERICK: Objection, vague.  
23 You may answer.  
24 A. I don't know that it removes obstacles, it  
25 enables a bill to be heard sooner.

182

1 Q. (By Ms. Berkower) Okay. So if the Senate  
2 wants to act on a particular type of legislation and the  
3 Governor designates it emergency legislation, it helps  
4 the bill be heard sooner, that's accurate?  
5 A. Yes.  
6 Q. Now turning back to the rules for the 2009  
7 Senate. Can you explain what the rule of the Senate  
8 Parliamentarian is in developing new rules?  
9 MR. FREDERICK: Objection, asked and  
10 answered.  
11 You may answer.  
12 A. To the extent that the Senate chooses to use  
13 its rules from a previous session as a starting point in  
14 a new session, and any changes to those rules or, you  
15 know, which would actually be just -- they would all be  
16 new rules for a Regular Session, they would ask the  
17 advice of the Parliamentarian and the Parliamentarian  
18 would be very involved in -- in their discussions.  
19 Q. (By Ms. Berkower) Would you be providing them  
20 advice?  
21 A. Yes.  
22 Q. Would your advice be based on precedence from  
23 prior sessions?  
24 A. It could.  
25 Q. Well, where generally would you look to provide

183

1 such advice?  
2 A. Well, when the Senate adopts its rules at the  
3 beginning of the session it is adopting its rules for  
4 that particular session, so it is not bound by  
5 precedence necessarily but it may look to those. And  
6 they may ask me questions about how things have been  
7 done in the past.  
8 Q. Do you recall the 2009 rules debate?  
9 A. Yes.  
10 Q. Was it lengthy?  
11 MR. FREDERICK: Objection, vague. You may  
12 answer.  
13 A. It probably was.  
14 Q. (By Ms. Berkower) Do you remember why it was  
15 so lengthy?  
16 A. I think it was -- there was opposition to the  
17 resolution.  
18 Q. Do you remember what the opposition to the  
19 resolution was?  
20 A. I think that most of the opposition was to  
21 Senate Rule 5.11.  
22 Q. And why did -- what were the reasons expressed  
23 for opposition to that rule?  
24 MR. FREDERICK: Caution you. I don't  
25 think this question is intending to seek privileged

184

1 communication. But I would just caution you, to the  
2 extent you relay opinions expressed, please, don't  
3 relate privileged communications.  
4 A. I think, generally, the opposition was from  
5 opponents of voter ID legislation. And I think they  
6 were opposed to the rule change or, actually, the rule  
7 itself. And I think the -- you know, I think you can  
8 look at the record for their specific comments.  
9 Q. To pass the rules every session, is that a  
10 majority vote requirement?  
11 A. I think for permanent rules, I think -- you  
12 know, under parliamentary law, it would be a majority.  
13 Q. So to pass the 2009 rules, including Rule  
14 5.11(d) that just required a simple majority of  
15 senators?  
16 A. You know, I think it is likely a simple  
17 majority, yes.  
18 Q. So was changing the rule away from majority of  
19 senators to get around requiring a two-thirds majority  
20 for voter ID to be heard out of order?  
21 A. Can you rephrase -- restate your question?  
22 Q. I asked whether this rule change, 5.11(d), was  
23 a way for a majority of senators to get around the  
24 two-thirds usual requirement for legislation to be heard  
25 out of order for purposes of voter identification

185

1 legislation?

2 MR. FREDERICK: Objection. Assumes facts

3 not in evidence. Objection, calls for speculation.

4 You may answer.

5 A. I think it was the Senate's decision to handle

6 a particular bill in a particular way.

7 Q. (By Ms. Berkower) Okay. But would it be

8 accurate to say that, the rule change allowed a majority

9 of senators to put voter ID legislation in a special

10 category?

11 A. Well, I mean, I think you have to view this --

12 I think sometimes we want to view these as rule changes.

13 But when we adopt permanent rules in any legislative

14 body, even though we may reference previous rules, they

15 always have the right to establish their rules for that

16 particular session. They are not bound by previous

17 session. So I -- you know -- it is their right to adopt

18 the rules and to treat bills in particular ways, and it

19 is certainly, you know, I think the rules prescribe

20 different calendar methods and I think they prescribed a

21 different calendar method potential for a voter ID bill.

22 Q. But would you agree that 5.11(d) put voter ID

23 legislation in a special category?

24 A. I think the Senate decided to allow voter ID

25 legislation to be considered by a majority vote, if it

186

1 chose to do so.

2 Q. And that rule allowing that was adopted by a

3 majority of senators, is that accurate?

4 A. Yes.

5 Q. Do senators have to be present on the floor in

6 order to vote on a bill?

7 A. Generally, yes. Although, to be present, they

8 can be adjacent to the floor, they can be in a gallery,

9 they can be adjacent to a gallery; so they may not

10 visually actually be seen right there but they are --

11 they are considered present for voting purposes if they

12 are -- you know, basically around, they are either in

13 the chamber or adjacent to it, yes.

14 Q. Do senators ever vote when they are adjacent to

15 the chamber?

16 A. Yes.

17 Q. Does that happen frequently?

18 A. Yes.

19 Q. And just as a general matter, what are the

20 reasons for allowing them to do that?

21 A. You know, I -- we frequently work through the

22 day and frequently work through lunch. There is a

23 lounge where members can go have lunch, it is adjacent

24 to the chamber, so they can vote from there if they are

25 having lunch. Also, I think it is considered that there

187

1 is, you know, when we are in session, there is a lot of

2 important activity surrounding legislation occurring

3 sometimes, you know, members may be meeting with

4 constituents in the hallway. Because -- because we have

5 limited access to the chamber itself, I think the Senate

6 rules contemplate that, it may be necessary to allow a

7 member to vote when they are close by but not

8 necessarily in the chamber.

9 Q. Is there an outer boundary on what's considered

10 close by?

11 A. You know, I think that we -- first of all, I

12 should say that, they can vote if they are in the

13 building and not close to the chamber, as long as we

14 actually accurately know they are voting and they are

15 giving it to us, it doesn't change the outcome. But if

16 we are on a particular bill and the vote is very close,

17 we would not consider a member's vote if they are not

18 where we could actually hear their vote or see them or

19 have some sort of knowledge that they are there.

20 Q. I see.

21 A. Yeah.

22 Q. One thing I forgot to ask you. Do you know

23 what day the 2009 or -- sorry, let me back up a second.

24 Rule 5.11 was included in the 2011 rules

25 as well; is that correct?

188

1 A. Yes. It was the same as in 2009.

2 Q. Do you know what day the 2011 rules were

3 adopted? I think one of the exhibits might help you.

4 A. Okay. That's great.

5 Q. I think one of the exhibits was -- now I can't

6 tell. I think Exhibit 15 there earlier today. I think

7 it might be on the front page.

8 A. So based on the exhibit before me, it appears

9 that the Senate rules were adopted on January 19th,

10 2011.

11 Q. Do you happen to know what day the Governor

12 issued his emergency designation for voter

13 identification?

14 A. I don't remember the specific day.

15 Q. Do you remember if it was before or after the

16 adoption of the Senate rules?

17 A. I think it was after.

18 Q. So at the time that the Senate rules were

19 passed, there was no -- there had been no public

20 announcement, yet, that there would be emergency

21 designation for voter ID legislation?

22 A. I really don't know if the Governor might have

23 made any public statements about his emergency

24 declarations at all.

25 Q. And turning your attention again to Rule

189

1 5.11(d), does that rule -- I will wait until you're  
2 there. I think, actually, it is in that exhibit you  
3 were just looking at, 15.

4 A. Okay. For that particular.

5 Q. Yeah.

6 A. All right.

7 Q. Do you have it?

8 A. Yes, I do. Uh-huh.

9 Q. Does that rule require the Governor for to -- I  
10 am sorry, the Lieutenant Governor to refer voter  
11 identification legislation to the Committee of the  
12 Whole?

13 A. No, it doesn't.

14 Q. Do you know if any of the rules require the  
15 Governor to refer voter ID legislation to the Committee  
16 of the Whole?

17 A. I don't.

18 MR. FREDERICK: Objection, assumes facts  
19 not in evidence.

20 You may answer.

21 A. No.

22 Q. (By Ms. Berkower) You don't know or they do  
23 not?

24 A. I am not aware of any rules that would require  
25 the Lieutenant Governor to make a referral to the

190

1 Committee of the Whole.

2 Q. So that would still be within the Lieutenant  
3 Governor's discretion?

4 A. Yes, for purposes of his referral.

5 Q. Is there more?

6 A. Well, I think I mentioned and testified  
7 previously that the Senate could choose to commit a bill  
8 to the Committee of the Whole --

9 Q. I see.

10 A. -- on its own.

11 Q. But barring that circumstance, it would be  
12 within Lieutenant Governor's discretion to refer the  
13 bill to the Committee of the Whole, if he saw fit?

14 A. Yes. The rule authorize the Lieutenant  
15 Governor to refer bills to committee.

16 Q. And this is something I have actually wondered  
17 for a long time and had been looking forward to asking  
18 you.

19 When a bill -- can you explain the  
20 difference between a vote in the Committee of the Whole  
21 and a vote on the Senate Floor? Because I know all the  
22 senators are involved in the Committee of the Whole.  
23 But I am a little unclear, procedurally, on exactly what  
24 the differences are and how all that works?

25 MR. FREDERICK: Object as vague, but you

191

1 may answer.

2 Q. (By Ms. Berkower) Do you understand what I am  
3 asking about?

4 A. I think so. In this case, the Committee of the  
5 Whole -- the Committee of the Whole is a method by which  
6 the Senate can consider things informally, I think I  
7 have stated that before.

8 Its vote in Committee of the Whole is, if  
9 it chooses to vote, and it may not. Really the  
10 Committee of the Whole could do -- you know, could act  
11 in different ways. But really the Committee of the  
12 Whole is for informal debate and deliberation and it can  
13 make recommendations to the full Senate on a piece of  
14 legislation or an investigation, you know, I think it is  
15 heard expulsion one time. It is an informal meeting.

16 The proceedings of the Committee of the  
17 Whole aren't kept in the Senate Journal. The Senate  
18 Journal only shows, generally, the Senate resolved  
19 itself into the Committee of the Whole. Committee of  
20 the Whole is a meeting of the Senate in committee but it  
21 is not in session.

22 Q. Okay.

23 A. But it is meeting.

24 Q. So what's the practical effect of a vote -- of  
25 voting a bill out of the Committee of the Whole?

192

1 A. Well, I think that we have -- we do have a  
2 constitutional requirement and a Senate requirement that  
3 bills have to have been reported from the committee. So  
4 a bill being heard in the Committee of the Whole would  
5 satisfy that requirement, that constitutional  
6 requirement, and also the requirement in the Senate  
7 Rules. So, you know, in that sense, that's a practical  
8 effect.

9 If it -- if it doesn't move a bill forward  
10 then the Senate would have no way of further acting on  
11 that particular piece of legislation on second and third  
12 readings, as required by the Constitution.

13 Q. It was as though it had died in committee?

14 A. That's right. Now there could be other ways to  
15 revive it, but, yes, that would be the effect.

16 Q. So once the Committee of the Whole votes on a  
17 bill, it still has to be voted on again to be passed, is  
18 that accurate?

19 A. Yes. Because the Constitution requires three  
20 readings, so the Senate, as a body would have to  
21 consider it on second and third reading before it can  
22 proceed to the House.

23 Q. As a practical matter, though, does it in any  
24 way short circuit the process in that all the members  
25 have already voted, so it becomes more form over

<p style="text-align: center;">193</p> <p>1 substance when it actually is voted on for final 2 passage?</p> <p>3 A. I don't think it short circuits it. It 4 certainly, as I stated previously, you know, it -- 5 because all the members can participate in the Committee 6 of the Whole and you would -- the Senate itself, because 7 it is a member of the Committee of the Whole in its 8 actual meeting would be aware of issues related to the 9 bill, you know, so it would have a greater knowledge of 10 a piece of legislation if it's gone through Committee of 11 the Whole than if it had gone through a different 12 committee just because every member is a member of the 13 Committee of the Whole.</p> <p>14 Q. Since every member has already voted on it, 15 though, would it be more form over substance when the 16 bill goes for a final vote?</p> <p>17 MR. FREDERICK: Objection, vague. 18 Objection, calls for speculation. 19 You may answer.</p> <p>20 A. No. I wouldn't say it is more form over 21 substance at all.</p> <p>22 Q. (By Ms. Berkower) Do you know if circumstances 23 in which legislator -- senators have ever changed their 24 vote between a vote in the Committee of the Whole and a 25 vote for final passage?</p>	<p style="text-align: center;">195</p> <p>1 know -- if perhaps there is a procedural flaw in a bill 2 as it was considered in committee and a member is aware 3 of it and calls a point of order, and the point of order 4 is sustained, to the extent that the remedy for the 5 point of order might delay a bill temporarily, that 6 would be one tactic. You know, I think certainly could 7 have a lot of debate on a bill. You can plan a lot of 8 debate. There may be the difference between one hour 9 versus 10 hours or 30 hours.</p> <p>10 Q. Do you think, as a general matter, the 11 two-thirds requirement to hear bills out of order slows 12 down those bill's consideration?</p> <p>13 A. Slows them down. It can, but it can also speed 14 it up.</p> <p>15 Q. When would it speed it up?</p> <p>16 A. Well, for example, as opposed to a bill -- in 17 the Senate we can have a bill that's on both calendars, 18 could be in the Regular Order of Business in the local 19 calendar. And we frequently have a case where the local 20 calendar is set for the next day and there is a bill on 21 it, and you know, maybe we are at a point in our session 22 where we are waiting on some amendments for another 23 bill, we don't have much to do, and a member could 24 suspend Regular Order of Business to take that bill up. 25 And in that case -- at that point, it would pass the</p>
<p style="text-align: center;">194</p> <p>1 A. I -- I can't recall anything specific but I am 2 sure that that's happened. Just sheer logic would tell 3 me it happened and been just in the last 30 years, 4 probably, close to 200 bills that have gone through the 5 Committee of the Whole. So it is extremely likely that 6 someone might have changed their vote.</p> <p>7 Q. Is there further debate on the bill once it 8 comes out of the Committee of the Whole?</p> <p>9 A. Yes. It's subject to the rules of the Senate 10 for debate on second and third reading.</p> <p>11 Q. Okay. Thank you.</p> <p>12 Under the Senate rules, are there 13 procedural stalling or delay tactics available to 14 senators?</p> <p>15 A. Well, I think under any parliamentary process, 16 there are -- there are, you know, ways of -- I think, 17 you know, if you avail yourself of the rights that you 18 have under the Senate rules, certainly, and you can slow 19 down legislation.</p> <p>20 Q. Can you name just a few examples of what you 21 mean by tactics to slow down legislation?</p> <p>22 MR. FREDERICK: Object to the extent it 23 mischaracterizes the testimony. 24 You may answer.</p> <p>25 A. Tactics to slow down. Well, I think -- you</p>	<p style="text-align: center;">196</p> <p>1 bill more quickly than if it had waited for a bill to 2 come up on a local calendar the next day.</p> <p>3 Q. For controversial pieces of legislation, as a 4 general matter, does a two-thirds majority requirement 5 to hear bills out of order slow down consideration of 6 those bills?</p> <p>7 A. For controversial bills?</p> <p>8 Q. Yes.</p> <p>9 A. First of all, it is said that there is not 10 necessarily a requirement on all bills. 11 Does it slow down them down? If there is 12 opposition and that opposition becomes known, you know 13 at that point when it is on the calendar and members 14 have to deliberate to work out some differences, yes, it 15 could slow it down.</p> <p>16 MS. BERKOWER: I think, Matt, can we take 17 a five minute break and then I am hoping after that I 18 will be able to more or less wrap up.</p> <p>19 MR. FREDERICK: Yeah, sure.</p> <p>20 MS. BERKOWER: Okay. Off the record, 21 please. 22 (Brief recess.)</p> <p>23 Q. (By Ms. Berkower) So I have a few more 24 questions about the 2009 rules that were adopted by the 25 Senate, which we have talked about a lot today. And I</p>

<p style="text-align: center;">197</p> <p>1 think you said before and correct me if I am wrong, that</p> <p>2 there is no requirement to suspend the two-thirds</p> <p>3 majority voting rule to refer a bill to the Committee of</p> <p>4 the Whole, is that accurate?</p> <p>5 A. Right. The Lieutenant Governor has the</p> <p>6 authority to refer bills directly to a committee, it</p> <p>7 doesn't require a motion by the body.</p> <p>8 Q. There is no, like, implicit connection between</p> <p>9 the two-thirds -- between any vote of any sort and</p> <p>10 referral of a bill to the Committee of the Whole.</p> <p>11 A. I --</p> <p>12 Q. The rules don't require it.</p> <p>13 A. Right.</p> <p>14 MR. FREDERICK: Objection, vague.</p> <p>15 You may answer.</p> <p>16 A. The rules just authorize the Lieutenant</p> <p>17 Governor to refer bills.</p> <p>18 Q. (By Ms. Berkower) Rule 5.11(d) does</p> <p>19 describe -- well, turning you attention back to it. I</p> <p>20 think you had that as Exhibit 15 from the Texas League.</p> <p>21 A. Yes.</p> <p>22 MR. FREDERICK: I am sorry. Are we</p> <p>23 talking about 2009?</p> <p>24 MS. BERKOWER: 2011.</p> <p>25 MR. FREDERICK: Okay.</p>	<p style="text-align: center;">199</p> <p>1 that the whole Senate should be present to hear debate</p> <p>2 on a bill of this nature?</p> <p>3 A. He might have said that. I don't know if he</p> <p>4 would have phrased it that way but --</p> <p>5 Q. Well --</p> <p>6 A. I think he -- you know, I shouldn't speculate,</p> <p>7 I am --</p> <p>8 Q. I think you had articulated previously that one</p> <p>9 of the benefits of the Committee of the Whole Senate is</p> <p>10 all the senators are present to hear all the evidence</p> <p>11 and debate in a more informal setting; is that accurate?</p> <p>12 A. Yes.</p> <p>13 Q. Do you remember if that was one of the reasons</p> <p>14 that Senator Williams gave for including the Committee</p> <p>15 of the Whole in this rule?</p> <p>16 MR. FREDERICK: Is your question limited</p> <p>17 to --</p> <p>18 MS. BERKOWER: Public record.</p> <p>19 MR. FREDERICK: -- reasons -- okay.</p> <p>20 A. Probably so. I think if he had a discussion</p> <p>21 about Committee of the Whole, he would have said that</p> <p>22 because that's how the Senate, the Committee of the</p> <p>23 Whole has been used in the Senate.</p> <p>24 Q. (By Ms. Berkower) And with regard to the</p> <p>25 purpose of suspending the two-thirds rule for this type</p>
<p style="text-align: center;">198</p> <p>1 MS. BERKOWER: Yes.</p> <p>2 Q. (By Ms. Berkower) So that Rule 5.11(d), as we</p> <p>3 have discussed at great length, does allow voter ID</p> <p>4 legislation to be set as a special order based on a</p> <p>5 majority vote. Is that an accurate summary of the rule?</p> <p>6 A. Yes.</p> <p>7 Q. But it also mentions the Committee of the Whole</p> <p>8 Senate; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall any discussion of why the</p> <p>11 Committee of the Whole Senate was included in this rule?</p> <p>12 MR. FREDERICK: Object on the basis of</p> <p>13 legislative privilege and caution you that -- caution</p> <p>14 you not to reveal any privileged communications about</p> <p>15 the reason for any part of this rule. As to the</p> <p>16 question of whether or not you remember any</p> <p>17 communications, you may answer that question.</p> <p>18 A. There were communications, yes. I think the</p> <p>19 debate would probably reveal why that was included.</p> <p>20 Q. Do you recall if that was part of -- if Senator</p> <p>21 Williams raised that point as part of the public record</p> <p>22 of that debate?</p> <p>23 A. I think he -- I think he probably did. I can't</p> <p>24 recall what he would have said exactly.</p> <p>25 Q. Do you recall if part of the reason he gave was</p>	<p style="text-align: center;">200</p> <p>1 of legislation, do you recall if part of the reason he</p> <p>2 gave was that the issue of voter ID legislation was a</p> <p>3 divisive issue?</p> <p>4 MR. FREDERICK: Object, assumes facts not</p> <p>5 in evidence. But you may answer.</p> <p>6 A. I don't recall how he would have characterized</p> <p>7 the issue.</p> <p>8 Q. Do you remember if anyone, as part of the</p> <p>9 public debate over the rules, articulated a need to</p> <p>10 suspend the two-thirds rule because the issue of voter</p> <p>11 ID was controversial?</p> <p>12 MR. FREDERICK: Object, assumes facts not</p> <p>13 in evidence.</p> <p>14 You may answer.</p> <p>15 A. I -- I don't remember anybody articulating</p> <p>16 that -- that that way, I don't remember.</p> <p>17 Q. Okay.</p> <p>18 And Matt, I think you mentioned, you</p> <p>19 cautioned the witness concerning issues of privilege.</p> <p>20 Can you explain the basis for the</p> <p>21 legislative privilege for the Parliamentarian?</p> <p>22 MR. FREDERICK: How so? I am sorry.</p> <p>23 Sorry. Put that down.</p> <p>24 MS. BERKOWER: That's okay.</p> <p>25 What is the basis for your assertion of</p>

<p style="text-align: center;">201</p> <p>1 legislative privilege for the Parliamentarian in the 2 Senate?</p> <p>3 MR. FREDERICK: She is an officer. She or 4 the Parliamentarian, generally, is an officer of the 5 Senate.</p> <p>6 The purpose of the Parliamentarian is to 7 provide advice to senators on parliamentary procedure 8 and legislative acts including bills and the Senate 9 rules. That's within the basic legislative privilege.</p> <p>10 MS. BERKOWER: Okay. So the -- would it 11 be accurate for me to say that it is not based on the 12 privilege of any other legislator?</p> <p>13 MR. FREDERICK: I don't think so. I mean, 14 no, I wouldn't say that.</p> <p>15 MS. BERKOWER: Is the privilege hers to 16 assert or is it other legis -- is it based on other 17 legislators as we have discussed with regard to, say, 18 staff members?</p> <p>19 MR. FREDERICK: You know, I can't -- I am 20 not prepared to take a firm position on that right now. 21 I --</p> <p>22 MS. BERKOWER: Okay. That wasn't my 23 intent.</p> <p>24 MR. FREDERICK: Okay. Yeah.</p> <p>25 MS. BERKOWER: That's fine.</p>	<p style="text-align: center;">203</p> <p>1 think I am going to instruct the witness not to answer. 2 Q. Are you following his advice? 3 A. Yes. 4 Q. Okay. I am only asking for the record for 5 that.</p> <p>6 MR. FREDERICK: Can I ask: Do you plan to 7 ask a lot of privilege related questions for the record? 8 MS. BERKOWER: Oh, no. 9 MR. FREDERICK: Okay. Good. 10 MS. BERKOWER: Oh, no. No. I am trying 11 to do my best to stay within the Court's orders but I 12 know that there are some -- 13 MR. FREDERICK: Sure. 14 MS. BERKOWER: -- questions that you still 15 may find objectionable, that's all. 16 MR. FREDERICK: I understand. And I 17 recognize that you have been cautious to do that. 18 MS. BERKOWER: We are a different place 19 than we were two weeks ago, Matt. 20 Q. (By Ms. Berkower) Are you familiar with any 21 rules concerning the amount of notice given to senators 22 before committee hearings? 23 A. Yes. 24 Q. What are those rules? 25 A. Depends on the kind of hearing that you have.</p>
<p style="text-align: center;">202</p> <p>1 MR. FREDERICK: It is a fair question. 2 MS. BERKOWER: We can move on. 3 MR. FREDERICK: Yeah. 4 Q. (By Ms. Berkower) Okay. Does the Lieutenant 5 Governor have any input into the rules that the Senate 6 passes every session, at the start of every session? 7 MR. FREDERICK: Object, asked and 8 answered. 9 You may answer. 10 A. Sometimes, yes; sometimes, no. 11 Q. Do you know if he had any input into the rules 12 passed for the 2009 or 2011 legislative sessions? 13 A. Yes. 14 Q. I should have been more specific. 15 Do you know if he had input into the rules 16 in 2009? 17 A. Yes. 18 Q. Did he have input into the rules in 2011? 19 A. Yes, he did. 20 Q. I don't want to tread on areas of privilege. 21 But can you say if his input into the rules is 22 substantive? 23 MR. FREDERICK: I am going to object that 24 this calls for a legal conclusion. I, also, think it's 25 getting into matters of legislative privilege, so I</p>	<p style="text-align: center;">204</p> <p>1 But for standing committees and special committees, the 2 committee is to meet outside of its regular time, 3 although the committees usually comply with this 4 anyways. They are required to give a 24-hour notice to 5 the members that that committee meeting is going to take 6 place. If they are going to have a public hearing on a 7 bill, they are to give a -- they are required to give a 8 24-hour notice of a public hearing on a particular bill. 9 Q. Are there any special rules concerning notice 10 given for meetings of committee -- as the Committee of 11 the Whole? 12 A. No. The Senate itself, every time that the 13 Committee of the Whole is convened, determines the 14 procedures for which the Committee of the Whole use 15 outside of what might be prescribed in Article XIII. 16 Q. When -- are those rules about notice a baseline 17 that may -- sorry, I will rephrase that. 18 Do committees ever give more than the 19 minimum amount of notice before a hearing? 20 A. Yes. 21 Q. Why would they do that? 22 MR. FREDERICK: Objection, calls for 23 speculation. Also, object on privilege to the extent it 24 calls for anyone's subjective motivation. If you can 25 answer without revealing that, you can do so.</p>



205

1 A. You know, I think -- I think if they know ahead  
2 of time, they might post a bill or a hearing sooner.  
3 You know, I think that's largely dependent on their work  
4 schedule and, you know, whether they have -- how -- for  
5 one thing, you know, when an author would have requested  
6 to have his bill heard, you know, if they are planning a  
7 meeting for Tuesday and a member, you know, asked Monday  
8 morning, it might be scheduled Monday morning. If they  
9 asked Friday, it just depends on when they schedule and  
10 their work schedule.

11 Q. Is more than the minimum amount of notice ever  
12 given to senators so that they can prepare for the  
13 hearing, like, by getting witnesses or scheduling --  
14 scheduling purposes like that?

15 A. Members other than the author? Are you asking  
16 me about any particular members?

17 Q. Well, I guess, does anyone ever get more notice  
18 than the minimum amount of notice?

19 A. Yes.

20 Q. Who is given more than the minimum amount of  
21 notice?

22 MR. FREDERICK: Objection, vague.

23 You may answer.

24 A. The members in the public are given notice  
25 whenever the Bill is posted, and that -- you know,

207

1 Q. Oh.

2 A. So I do have some recollection for voter ID  
3 for -- just because it was last session and it is more  
4 fresh in my memory, I don't really remember other  
5 instances.

6 Q. Do you remember -- so you're saying you do --

7 A. I do remember for 2011, I do.

8 Q. How much notice was given?

9 A. For the public hearing portion of it which  
10 would have occurred on a Tuesday, so the notice for  
11 public hearing, and we refer to public hearings -- it is  
12 a little bit of a term of art. But if we call something  
13 a public hearing, it is the hearing at which testimony  
14 will be taken from the public. Because I think we did  
15 have -- I think the Committee of the Whole did meet that  
16 Monday, also. But I think both hearings were noticed on  
17 Friday morning previous to the Monday and Tuesday.

18 Q. In your view, is that -- was that an unusual  
19 amount of notice?

20 A. I think -- I think that's a typical amount of  
21 notice for a bill to be considered by committee on a  
22 Tuesday. I think it's very, very typical. When I was  
23 Committee Director and we had Tuesday hearings, we  
24 almost always posted on Friday afternoon. And I think a  
25 lot of our -- a lot -- not all, I mean, there are

206

1 certainly 24 hours is the minimum. It's not a maximum.  
2 Could be more. It could be less if the rules are  
3 suspended and that happens quite a bit.

4 Q. Is it customary, though, if it is anticipated  
5 that a particular hearing may require witnesses to give  
6 more than 24 hours notice?

7 A. Yes, I think so. If they indeed have the time  
8 to do that procedurally, sometimes they have no choice.

9 Q. What about the Committee of the Whole, is it  
10 customary to give more than the minimum amount of notice  
11 for those hearings?

12 A. I think on a bill, probably more than 24 hours  
13 would be the case. You know, for the simple reason that  
14 it involves a lot more people, so that's probably  
15 likely.

16 Q. In your memory of instances in which the  
17 Committee of the Whole has met, do you remember how much  
18 notice was provided of those hearings?

19 A. I don't remember, no.

20 Q. Do you remember if any senators --

21 A. I am sorry.

22 Q. Oh.

23 A. I should rephrase that. I do know -- I think  
24 when you were asking your question, I was thinking  
25 outside of voter ID, I don't know why.

208

1 particularly smaller committees, you know, will probably  
2 have a better idea of their agenda. But a lot of our  
3 committees that have hearings on Tuesday, Tuesdays post  
4 on Fridays.

5 Q. Would you view it as typical even for a larger  
6 committee like the Committee of the Whole?

7 A. I think so, yes. I think that's typical.

8 Q. Do you remember if any senators complained  
9 about the amount of notice given for the Committee of  
10 the Whole hearing in 2011?

11 A. Yes, I do.

12 Q. Who complained?

13 A. I particularly remember Senator Van de Putte  
14 issuing a letter. It may have been addressed to Senator  
15 Duncan or the Lieutenant Governor, I don't remember, but  
16 I remember her writing a letter complaining of the  
17 notice. Or I shouldn't say "complaining," but concerned  
18 about the notice.

19 Q. Actually have the letter if it would help you  
20 remember.

21 A. Well, I -- that's what I remember.

22 Q. Okay. Well, let me introduce it as an exhibit  
23 and then you can take a look at it.

24 A. Okay.

25 Q. I think this was previously Exhibit 80 in

209

1 another deposition.  
 2 (Exhibit No. 80 previously marked.)  
 3 Q. Did you have a chance to review it?  
 4 A. Yes, I did.  
 5 Q. Did this refresh your memory as to Ms. --  
 6 Senator Van de Putte's notice given about that hearing?  
 7 A. Yes.  
 8 Q. Who makes the decision about when to give  
 9 notice for meetings of the Committee of the Whole?  
 10 A. I think giving notice for a hearing for the  
 11 Committee of the Whole is a little bit difficult  
 12 because, unlike a regular committee, the chairman of the  
 13 committee can't just decide that the committee is going  
 14 to meet at certain time. The Committee of the Whole  
 15 process requires that the Senate itself resolve in the  
 16 Committee of the Whole, it is the only way to actually  
 17 be convened. So it would be by a vote of the Senate.  
 18 So to the extent that notice is provided in the public  
 19 of a hearing, it takes someone and likely, in this case,  
 20 the Lieutenant Governor had made the decision that  
 21 Senator Duncan would be appointed the Chair of the  
 22 committee. So I think Senator Duncan, in consultation  
 23 with the Lieutenant Governor, had anticipated and  
 24 decided that the committee would meet on Monday and  
 25 Tuesday. And pursuant to that plan, which is still

210

1 subject to Senate approval, because only the Committee  
 2 of the Whole can convene through a Senate action,  
 3 Senator Duncan, at that point, made the decision when it  
 4 would happen. In terms of how it was actually posted, I  
 5 don't remember what we would have put in the posting  
 6 exactly.  
 7 Q. So to be clear, was it a notice that the Senate  
 8 would meet to resolve itself into the Committee of the  
 9 Whole?  
 10 A. Yes. But, no. Well, the Senate wouldn't have  
 11 had to give anyone notice to that, but to have a public  
 12 hearing --  
 13 Q. Uh-huh.  
 14 A. -- the Senate would want to have the  
 15 participation of a lot of people. And so we would  
 16 have -- we -- the Senate availed itself of its regular  
 17 committee posting mechanism to get the notice out to the  
 18 public that there would be a hearing on the bill and the  
 19 Committee of the Whole on Tuesday, on that Tuesday.  
 20 Q. And based on what you just explained, is it  
 21 accurate to say that the scheduling of that was Senator  
 22 Duncan and Lieutenant Governor Dewhurst made that  
 23 decision?  
 24 A. Well, I -- yes. You know, it would have been  
 25 in -- probably in consultation -- yes, they would have

211

1 made that decision.  
 2 Q. Do you see the -- in the second paragraph,  
 3 Senator Van de Putte says that, the Lieutenant Governor  
 4 waited until very late in the day Thursday to deliver a  
 5 letter to senators, literally slipping it under most  
 6 office doors after hours, giving notice of the Committee  
 7 of the Whole hearing.  
 8 Do you see that portion?  
 9 A. Yes.  
 10 Q. Do you know if that's, in fact, how notice was  
 11 delivered to some senators?  
 12 A. Well, I think that letter was a -- a letter  
 13 from the Lieutenant Governor indicating his intention to  
 14 appoint Senator Duncan as Chair of the Committee of the  
 15 Whole. I don't remember if it -- how much more detail  
 16 it gave about when the public hearing would be had. It  
 17 wouldn't have served as official notice. I think, at  
 18 that point, it would have been more of a courtesy notice  
 19 in an attempt to get the information to members as  
 20 quickly as possible.  
 21 Q. Where would the official notice have come from?  
 22 A. Well, again, Committee of the Whole has to  
 23 choose to resolve itself, so all the Lieutenant Governor  
 24 at this point can do is give an indication to members  
 25 that, if they so choose to convene the Committee of the

212

1 Whole, he will appoint a certain person, that's what the  
 2 rules allow. And as leadership of the Senate and  
 3 with -- in consultation with Senator Duncan, they, of  
 4 course, had planned when the best time for the Senate --  
 5 you know, we would have to take into consideration when  
 6 the Senate was coming back in, things like that. So you  
 7 would have logistical issues. There is not a  
 8 requirement in the rules for any kind of notice to be  
 9 given because the members choose to resolve themselves.  
 10 So the Lieutenant Governor issued a letter  
 11 out of courtesy to indicate to the Senate what his  
 12 thinking on the timing of the Committee of the Whole  
 13 was, even though it is their decision. He issued the  
 14 letter to give them the notice as soon as he could. And  
 15 I believe the Governor had made a declaration of an  
 16 emergency for voter ID that day, so that was very quick  
 17 notice. And probably we weren't able to finalize a  
 18 posting of the official sort that we might do for --  
 19 that we would do for public hearing until, you know, the  
 20 next morning. So I think that was an attempt by the  
 21 Lieutenant Governor to communicate information earlier.  
 22 Q. I see. In prior years, when the Committee of  
 23 the Whole -- when this type of committee -- when this  
 24 type of procedural -- well, in prior -- you said the  
 25 Lieutenant Governor sort of had -- the rules don't

213

1 specifically provide for a committee hearing or  
2 procedures to hold the committee hearing, they have to  
3 resolve themselves. And the Lieutenant Governor, is it  
4 fair to say, he plays a role in the timing of that  
5 because he is the President of the Senate -- actually, I  
6 will withdraw that.

7 I guess what I am trying to ask, in prior  
8 years, do you know if the Lieutenant Governor gave more  
9 notice of his thinking concerning when the Senate would  
10 resolve itself into the Committee of the Whole?

11 A. I think a notice was given in 2009 of some  
12 sort. I have a recollection of a letter, and I don't  
13 remember if it was from the Lieutenant Governor, I think  
14 it was. It is possible that it was from Senator Duncan,  
15 I just -- I remember a letter.

16 Q. Do you remember if there was more notice  
17 provided by that letter than by the letter referenced in  
18 this exhibit?

19 A. For the public hearing or for the initial  
20 meeting or either, I guess.

21 Q. Either.

22 A. I don't remember how much time.

23 Q. Okay. Now, turning your attention back to  
24 exhibit, I think it was 15, the bill history for Senate  
25 Bill 14.

214

1 A. Uh-huh.

2 Q. No.

3 A. Oh, the bill history for Bill 14.

4 Q. Yes. Oh, it is this one, 17.

5 A. Okay.

6 Q. There you go.

7 From the first reading -- well, how many  
8 days -- based on this exhibit, can you tell how many  
9 days there were between the date on which Senate Bill 14  
10 was filed and the date in which it passed the Senate?

11 A. I think earlier, we had said for the record  
12 that that was 14 days and it appears to be, based on  
13 Adam's math and my math, it would be 14 days.

14 Q. And how many days between when it was read for  
15 the first time and when it was passed?

16 A. Two days.

17 Q. In your experience as Parliamentarian, how  
18 frequently is a bill passed in that short of a time  
19 span?

20 A. I would say it is not frequent but it certainly  
21 has happened enough times for me to remember that it's  
22 been a lot more than one time. I mean, I have seen  
23 bills passed in 45 minutes from start to finish. So, it  
24 is not frequent but it certainly occurred quite a bit.

25 Q. Do you recall if there was opposition to Senate

215

1 Bill 14 as expressed in the public record?

2 A. Yes.

3 Q. The other bills that you saw passed in  
4 similarly short time span, do you recall if there was  
5 opposition on the public record to those bills?

6 MR. FREDERICK: Objection, vague.

7 You may answer.

8 A. There could have been. "Opposition" is a  
9 fairly broad word, I think.

10 Q. (By Ms. Berkower) Well, do you recall, was  
11 this bill passed solely on party lines?

12 A. Yes, I think it was.

13 Q. Do you recall any other bill that was passed in  
14 this short of a time span that was passed purely on a  
15 party line vote?

16 A. It is possible. I don't always -- I recall  
17 this one because I was here and it was recent but I  
18 wouldn't always look at votes in the journals with an  
19 eye for what the party breakdown was, so I don't think I  
20 can remember anything.

21 Q. Okay. In the time -- and you were present, you  
22 said, I think earlier, for the debate of all of the  
23 bills that Mr. Harris raised with you today, when they  
24 were debated in the Senate, is that accurate?

25 A. Yes.

216

1 Q. You said you don't really remember much of the  
2 substance of those debates, correct?

3 A. That's true. I am frequently -- I am present  
4 for the debates. I have to pay attention to make sure  
5 that their discussions are germane but I am not often  
6 engaged in listening to their arguments.

7 Q. Do you recall anyone expressing, as part of the  
8 public record, that -- well, before -- let me back up a  
9 second.

10 Do you remember what the purpose of SB 14  
11 was, as expressed in the public record?

12 A. I don't think I can do it any more justice than  
13 what they have done in the record. I mean, I -- I can  
14 read you the caption, that's their purpose, but I can't  
15 do any justice to what their arguments or their state of  
16 purposes were.

17 Q. Do you recall if during the time that you were  
18 present for these public debates, did you ever hear  
19 anyone express that part of the purpose for these bills  
20 was to prevent non-citizens from voting?

21 A. If I was listening and I heard that, I would  
22 remember, and I don't remember any of those statements  
23 being made.

24 Q. Okay. And you said earlier today that you were  
25 born abroad; is that correct?

217

1 A. Yes.  
 2 Q. Are you a U.S. citizen now?  
 3 A. Yes.  
 4 Q. So you became a naturalized U.S. citizen at  
 5 some point in time?  
 6 A. Yes.  
 7 Q. Do you have a citizen -- excuse me -- a  
 8 citizenship certificate?  
 9 A. Yeah, somewhere. Yes, I do.  
 10 Q. Does it have a photo on it?  
 11 A. It has a photo of me when I was in high school.  
 12 Q. Do you look the same as you looked in high  
 13 school?  
 14 A. I look better.  
 15 Q. Okay. Have you ever had to get the photograph  
 16 retaken or renewed in any way?  
 17 A. No. No, I subsequently -- no, I haven't had  
 18 the need for using it. I have got other forms of  
 19 identification.  
 20 Q. Do you know if the certificate ever expires?  
 21 A. I don't know. If it has an expiration date on  
 22 the certificate.  
 23 Q. I did not say that to make you run home and  
 24 check.  
 25 Okay. But to be clear, you haven't had

218

1 the photograph retaken in the time that you originally  
 2 got the certificate?  
 3 A. For the actual naturalization certificate, no.  
 4 Q. So -- and we are getting more towards the end  
 5 here, promise.  
 6 MR. FREDERICK: Okay.  
 7 Q. (By Ms. Berkower) You said that part of your  
 8 role as Parliamentarian, you work with amendments for  
 9 bills.  
 10 A. Yes.  
 11 Q. What is your role with amendments?  
 12 A. I am responsible with some assistance,  
 13 obviously, thinking there can be a lot of amendments for  
 14 ordering amendments and correct monitoring order for  
 15 consideration by the body.  
 16 And if there is a -- a defect in the  
 17 amendment that would be confusing for the body, maybe it  
 18 is not drafted correctly or it's drafted to a different  
 19 version of the bill, to the extent that I catch that on  
 20 review, I would be involved in attempting to correct  
 21 that, sometimes the corrections are easy. You know, I  
 22 can change line numbers and page numbers. Sometimes I  
 23 have to consult with the member or the staff person or  
 24 assistants would do that for me. I am sometimes asked  
 25 to review the germaneness of amendments to legislation.

219

1 Sometimes I am asked to draft on the spot amendments to  
 2 amendments to help the members accomplish their  
 3 purposes. Usually this would be, as I said, very on the  
 4 spot.  
 5 Q. I meant to ask you a minute ago, and then we  
 6 will get back to the subject. Are you a registered  
 7 voter here in Texas?  
 8 A. Yes.  
 9 Q. Are you aware of any instances in which  
 10 legis -- turning your attention back to amendments now,  
 11 sorry.  
 12 Are you aware of any instances where  
 13 legislation was presented with the understanding that no  
 14 amendments would be -- would be accepted?  
 15 MR. FREDERICK: I am sorry. Could you  
 16 repeat the question, please.  
 17 Q. (By Ms. Berkower) Are you aware of any  
 18 instances where legislation was presented where there  
 19 was an understanding that no amendments would be made or  
 20 accepted?  
 21 MR. FREDERICK: I am going to object.  
 22 Object on vagueness.  
 23 I am, also, going to object on the basis  
 24 of privilege. I think this asks you to communicate, as  
 25 I understand it, the mental impressions of legislators

220

1 so I would instruct you not to answer.  
 2 A. I am going to take the advice of my counsel and  
 3 not answer the question.  
 4 MS. BERKOWER: Okay. Can we go off the  
 5 record a second.  
 6 (Brief pause.)  
 7 MS. BERKOWER: So we just had -- I will  
 8 say, for the record, counsel and I just had a discussion  
 9 on this. And it is my understanding that he is willing  
 10 to let me examine this witness on this document, is that  
 11 accurate? Subject to any objections to specific  
 12 questions.  
 13 MR. FREDERICK: Right. As I have  
 14 explained to Ms. Berkower, the state objects to the  
 15 relevance of this exhibit, maintains that it has  
 16 absolutely no connection to this case. However, for  
 17 purposes of this deposition, I don't -- we will not --  
 18 subject to that objection, we will not prevent  
 19 questioning on the document, you know, and obviously, we  
 20 don't intend to waive any later objections about a  
 21 specific question.  
 22 MS. BERKOWER: Okay. So this will be --  
 23 THE REPORTER: 18.  
 24 MS. BERKOWER: Well, these are actually  
 25 Attorney General's exhibits and I am supposed to start

<p style="text-align: center;">221</p> <p>1 with 700 for this deposition, so can this be 700 please.</p> <p>2 (Deposition Exhibit No. 700 marked.)</p> <p>3 Q. Can you review this, please.</p> <p>4 A. Yes. Okay.</p> <p>5 Q. Do you know what this is?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It's an email from David Hanna, Attorney for</p> <p>9 the Texas Legislative Council to me.</p> <p>10 Q. What's the date on the email?</p> <p>11 A. May 11th, 2011.</p> <p>12 Q. And what's the subject line on the email?</p> <p>13 A. "Pre-doing committee report."</p> <p>14 Q. Do you know what the subject is referring to?</p> <p>15 A. Yes.</p> <p>16 Q. What is it referring to?</p> <p>17 A. I had -- I am pretty sure I had called David</p> <p>18 Hanna --</p> <p>19 MR. FREDERICK: Actually, I am going to</p> <p>20 caution you here.</p> <p>21 I would object to the discussion of the</p> <p>22 content of any communication, including the substance of</p> <p>23 this email, based on legislative privilege. I</p> <p>24 understand that there have been rulings in the case in</p> <p>25 which this was introduced. There has not been a waiver</p>	<p style="text-align: center;">223</p> <p>1 THE WITNESS: Well, some information --</p> <p>2 you all, go ahead.</p> <p>3 MS. BERKOWER: If you want to talk to her</p> <p>4 now, that's fine with me.</p> <p>5 MR. FREDERICK: Yeah. I don't -- I don't</p> <p>6 need to go back on our discussion. I am having second</p> <p>7 thoughts about whether this should be introduced as an</p> <p>8 exhibit. I actually ask at this time that we take this</p> <p>9 exhibit out.</p> <p>10 MS. BERKOWER: Well, what about this,</p> <p>11 though: Could we treat this exhibit, since it has been</p> <p>12 released to public -- and I have represented to you it</p> <p>13 is represented on blogs, I think you're familiar with</p> <p>14 that. Can we treat this as though this is a public</p> <p>15 statement and ask to extend the questions -- since the</p> <p>16 questions have been allowed in depositions for this case</p> <p>17 about public statements?</p> <p>18 Do you understand what I mean?</p> <p>19 MR. FREDERICK: I do. I do.</p> <p>20 So can we go off the record?</p> <p>21 MS. BERKOWER: Yes.</p> <p>22 MR. FREDERICK: And let me talk to my</p> <p>23 client for a second.</p> <p>24 (Brief pause.)</p> <p>25 MR. FREDERICK: I have spoken to my client</p>
<p style="text-align: center;">222</p> <p>1 of legislative privilege in this case, and so I am not</p> <p>2 quite sure how to handle it. I mean, at this point, I</p> <p>3 am not really sure that it is possible for us to -- to</p> <p>4 talk about this exhibit without getting into privilege</p> <p>5 problems.</p> <p>6 MS. BERKOWER: Okay.</p> <p>7 MR. FREDERICK: Would it be possible, let</p> <p>8 me just ask: Is it possible for you to ask about the</p> <p>9 subject matter, generally, the rules without revealing</p> <p>10 the specific content of this communication?</p> <p>11 MS. BERKOWER: Yeah. Why don't I do this.</p> <p>12 Why don't I ask questions. I think in other depositions</p> <p>13 where -- where the testimony could potentially implicate</p> <p>14 a thought processes that were asserted to be privileged</p> <p>15 the witness was allowed to testify about just the text</p> <p>16 of the document in front of her as an Exhibit.</p> <p>17 MR. FREDERICK: Okay.</p> <p>18 MS. BERKOWER: And I can ask her general</p> <p>19 questions about, that don't implicate any specific</p> <p>20 communications, would that be acceptable to you?</p> <p>21 THE WITNESS: Would I be able to have a</p> <p>22 discussion with my attorney about this?</p> <p>23 MS. BERKOWER: Yes. We can finish talking</p> <p>24 about this and then you can talk to him.</p> <p>25 MR. FREDERICK: Yeah.</p>	<p style="text-align: center;">224</p> <p>1 about this. And I have been reminded that this document</p> <p>2 is subject not only to legislative privilege, but</p> <p>3 Ms. Davis has an attorney-client relationship with</p> <p>4 Mr. Hanna who is a lawyer who works for the Texas</p> <p>5 Legislative Council. And at the time that this document</p> <p>6 was produced or released, or whatever, no one had</p> <p>7 consulted with Ms. Davis, as the client, to see if she</p> <p>8 was willing to waive her attorney-client privilege.</p> <p>9 Regardless of what happened in redistricting, she has</p> <p>10 not waived her attorney-client privilege over this</p> <p>11 document. To the extent that it was disclosed, it was</p> <p>12 done without her consent as the client. And I -- I</p> <p>13 insist that we take this out of the deposition record</p> <p>14 and that this not be introduced or discussed,</p> <p>15 specifically. I believe this is privileged.</p> <p>16 MS. BERKOWER: Can I ask one question.</p> <p>17 MR. FREDERICK: Yes.</p> <p>18 MS. BERKOWER: Who is Doug Davis?</p> <p>19 MR. FREDERICK: Doug Davis is a lawyer who</p> <p>20 was employed by the Senate at the time, at the time that</p> <p>21 this was raised.</p> <p>22 MS. BERKOWER: Would you -- are you</p> <p>23 asserting that Karina Davis and Doug Davis have the same</p> <p>24 attorney-client relationship with David Hanna?</p> <p>25 MR. FREDERICK: I am not sure. I don't</p>

<p style="text-align: center;">225</p> <p>1 know that it would be exactly the same, but they both</p> <p>2 would have an attorney-client relationship, I am</p> <p>3 confident of that.</p> <p>4 MS. BERKOWER: Are you confident that</p> <p>5 their interests are aligned, to the extent that cc'ing</p> <p>6 Doug Davis would not waive any privilege she had with</p> <p>7 Mr. Hanna.</p> <p>8 MR. FREDERICK: Yes.</p> <p>9 MS. BERKOWER: And are you asserting,</p> <p>10 also, that the disclosure of this document, I mean, I</p> <p>11 think we all agree that legislative privilege and</p> <p>12 attorney-client privilege are different in terms of</p> <p>13 waiver. And while someone else can't waive your</p> <p>14 legislative privilege for you, someone else can waive</p> <p>15 your attorney-client privilege for you. So to the</p> <p>16 extent that this was disclosed, you're still asserting</p> <p>17 that attorney-client privilege covers it now that it's</p> <p>18 been disclosed.</p> <p>19 MR. FREDERICK: Yeah. I mean, you know,</p> <p>20 am not -- at this time, I am not prepared or willing to</p> <p>21 debate the specifics of waiver. But this is subject to</p> <p>22 legislative privilege and attorney-client privilege. It</p> <p>23 has not been produced by the State in this litigation.</p> <p>24 And to my knowledge, neither of the clients, nor the</p> <p>25 holders of the legislative privilege have waived that</p>	<p style="text-align: center;">227</p> <p>1 attorney-client privilege is being asserted of this</p> <p>2 document, is it fair to say today is, to your knowledge,</p> <p>3 is the first day to which it is being asserted?</p> <p>4 MR. FREDERICK: Actually, it is probably</p> <p>5 not. I can't say for sure this is the first day it is</p> <p>6 being asserted. It is entirely possible it was asserted</p> <p>7 previously. And I understand your questions about</p> <p>8 privilege and waiver.</p> <p>9 What I am asking is: Given that this is</p> <p>10 not a document that's been produced in this case, it</p> <p>11 does not have anything to do with Senate Bill 14, I</p> <p>12 don't think there is any purpose in including this in</p> <p>13 the record of this deposition or the case and I would</p> <p>14 ask that we withdraw this is an exhibit. If you like to</p> <p>15 ask Ms. Davis about the procedures that are discussed in</p> <p>16 this email, I have no objection to that but I cannot</p> <p>17 consent to the inclusion of this as an exhibit in this</p> <p>18 deposition.</p> <p>19 MS. BERKOWER: And to be clear, that's on</p> <p>20 the basis of attorney-client privilege.</p> <p>21 MR. FREDERICK: And legislative privilege.</p> <p>22 MS. BERKOWER: So I understand the reason</p> <p>23 why you are insisting on the withdrawal of this exhibit</p> <p>24 on the basis of attorney-client privilege. Can you</p> <p>25 explain the -- your insistence on the withdrawal of this</p>
<p style="text-align: center;">226</p> <p>1 privilege, so.</p> <p>2 Q. (By Ms. Berkower) To your knowledge, just to</p> <p>3 flesh out the record a bit and I understand your</p> <p>4 position on this. Did Ms. Davis or Doug Davis -- and</p> <p>5 you guys are not related in any way?</p> <p>6 A. Well, we are married.</p> <p>7 Q. Oh, you're married. Okay. -- okay. Well,</p> <p>8 another type of privilege.</p> <p>9 MR. FREDERICK: I will, yeah. We haven't</p> <p>10 talked about spousal privilege, yet.</p> <p>11 MS. BERKOWER: I don't know we would need</p> <p>12 to in the context of this. Is he a doctor by any</p> <p>13 chance?</p> <p>14 Okay. Did either of the Davises learn</p> <p>15 prior to today that this email had been disclosed?</p> <p>16 MR. FREDERICK: I don't know.</p> <p>17 I have not -- I have not spoken,</p> <p>18 specifically, to Ms. Davis or to Mr. Davis about their</p> <p>19 knowledge of whether it was disclosed.</p> <p>20 MS. BERKOWER: Do you know if there was</p> <p>21 any effort made prior to today to get this -- I don't</p> <p>22 know what the right term for it is -- clawed back by the</p> <p>23 State, I guess.</p> <p>24 MR. FREDERICK: I don't know.</p> <p>25 MS. BERKOWER: So to the extent that</p>	<p style="text-align: center;">228</p> <p>1 exhibit on the basis of legislative privilege?</p> <p>2 MR. FREDERICK: What would -- sorry, what</p> <p>3 would you like to me to explain?</p> <p>4 MS. BERKOWER: Well, do you feel this is</p> <p>5 in some way improperly produced on the basis of</p> <p>6 legislative privilege?</p> <p>7 MR. FREDERICK: To the extent it is being</p> <p>8 produced in this case then, yes. We have asserted</p> <p>9 legislative privilege. This is subject to legislative</p> <p>10 privilege.</p> <p>11 MS. BERKOWER: Well, it is not -- I mean,</p> <p>12 it is a trial exhibit used in a district court case in</p> <p>13 the District of D.C., so it is publicly available for</p> <p>14 review by anybody. So I am just trying to understand</p> <p>15 how -- I am not saying you can't. I am just trying to</p> <p>16 understand your theory of asserting legislative</p> <p>17 privilege over this document right now.</p> <p>18 MR. FREDERICK: At this point, I am</p> <p>19 prepared to say only that we're asserting legislative</p> <p>20 and attorney-client privilege. I am not prepared to</p> <p>21 debate attorney-client or legislative privilege with</p> <p>22 this document. I am asserting our strong objection</p> <p>23 based on those privileges and the complete irrelevance</p> <p>24 of this document to its introduction in this deposition.</p> <p>25 I -- I really don't understand why we are looking at a</p>



229

1 document that was a document from the redistricting  
2 case, it just doesn't have anything to do with this  
3 case.

4 I am not objecting to you asking questions  
5 about the subject matter, but I --

6 MS. BERKOWER: Okay.

7 MR. FREDERICK: I cannot -- I cannot  
8 consent to this being disclosed in this case.

9 MS. BERKOWER: Okay. Well, I guess given  
10 that you feel that this is a privileged -- this is  
11 subject to privilege, I guess I will agree to withdraw  
12 it not -- reserving our right to try and re-introduce  
13 this at some other time when perhaps on some sort of  
14 motion or just in the future, but out of abundance of  
15 caution and given the direction we have received from  
16 the Court in this case to be conscious of these  
17 privileges, I will agree to that in this instance only.  
18 Is that acceptable to you?

19 MR. FREDERICK: Yes. And I appreciate it  
20 very much. I understand, and I recognize that you have  
21 arguments that you want to assert, I appreciate your  
22 consideration.

23 MS. BERKOWER: I think, though, based on  
24 what you said, I am still going to ask her about some of  
25 the subjects covered in the exhibit and you can object

230

1 as you see fit. Do you want it back?

2 MR. FREDERICK: No. When you say, "the  
3 subjects," does that mean you're going to discuss the  
4 actual text of that exhibit?

5 MS. BERKOWER: No. I am going to ask her  
6 about amendments and about preclearance and about her  
7 procedures relating to those things.

8 MR. FREDERICK: Yeah, subject to potential  
9 objections but, sure, I understand.

10 Q. (By Ms. Berkower) Okay. Are you ready?

11 A. Yes.

12 Q. Do you know what "preclearance" is?

13 A. More or less, yes.

14 Q. What is your understanding of "preclearance"?

15 A. My understanding is that bills involving an  
16 elections process, that certain states have to submit  
17 laws for preclearance either to the Department of  
18 Justice or through the District Court in DC before the  
19 bills can be implemented in Texas.

20 Q. Are those bills relating to certain subject  
21 matters?

22 A. Yes. And I should be specific, under the  
23 Voting Rights Act.

24 Q. So are those election and voting related bills?

25 A. Voting related bills.

231

1 Q. To your knowledge, does the Senate consider the  
2 preclearance process when it is making legislation?

3 A. I think, generally speaking, the Senate  
4 considers the preclearance process when it is  
5 considering certain voting bills.

6 Q. Do you remember the way in which the Senate  
7 considered preclearance during its consideration of SB  
8 14?

9 A. I think, in general, the tenor of all of the  
10 debate in consideration on Senate Bill 14, I think it is  
11 clear by the public record that the members understood  
12 the bill would be subject to preclearance and that they  
13 took that seriously and went to great lengths to build a  
14 record for that eventual process.

15 Q. What pieces of the record do you think relate  
16 to that process?

17 MR. FREDERICK: Objection, vague.

18 Q. Do you understand the question?

19 A. I don't know that I can distinguish one part of  
20 the record versus another part.

21 Q. Well, what did the senators do, in your view,  
22 that related to preclearance? And I am asking as a  
23 matter of the public record.

24 A. I think they had a lot of discussions about the  
25 record. They submitted, especially, in the Committee of

232

1 the Whole and I think, potentially, on the Senate floor,  
2 although can't remember very specifically whether in  
3 2011, 2011 and 2009 how all this occurred. But members  
4 went to great lengths to submit lots of material for the  
5 record, letters, exhibits, in general, and especially in  
6 the Committee as a whole process, we were labeling items  
7 that were submitted by all the members with exhibit  
8 numbers which is not what the Senate would usually do  
9 when it is considering bills. So I think for me, as an  
10 employee in that process, it was clear to me that the  
11 members were building a record for preclearance or  
12 potential litigation.

13 Q. Do you ever seek legal advice about  
14 preclearance?

15 A. I may have.

16 Q. Have you ever sought preclear -- advice  
17 concerning preclearance in the contracts regarding the  
18 voter ID legislation?

19 MR. FREDERICK: I am going to object. On  
20 the basis of attorney-client privilege, to the extent  
21 any such communication occurred, that would be subject  
22 to privilege, so I am going to object.

23 MS. BERKOWER: The fact of the  
24 communication is subject to the privilege. I think I am  
25 trying to get at privilege log type questions here.

233

1 Q. (By Ms. Berkower) Did you seek legal advice  
2 about preclearance in the context of voter ID  
3 legislation seems to me like an entry on a privilege  
4 log.

5 MR. FREDERICK: I think the question  
6 requires the substance of the communication, so I stand  
7 by my objection.

8 I would instruct you not to answer on the  
9 basis of privilege.

10 Q. (By Ms. Berkower) Did you seek legal advice  
11 concerning preclearance in 2011?

12 MR. FREDERICK: To the extent that this is  
13 a yes or no question, you may answer; but don't reveal  
14 the substance of any communication between you and an  
15 attorney.

16 A. Yes.

17 Q. (By Ms. Berkower) Did you seek advice  
18 concerning preclearance in 2012, legal advice, sorry?

19 MR. FREDERICK: Going to object as vague.  
20 Going to object to relevance. I don't understand why we  
21 are getting into attorney-client privilege, but that's  
22 clearly where this is going.

23 A. I will take the advice of my counsel and not  
24 answer those questions.

25 Q. Okay. Well, in terms of relevance, she would

234

1 still have to answer today. And I am not sure how, when  
2 I asked, "Did you seek legal advice in 2011 about  
3 preclearance," and then I asked the same question in  
4 2012, how one would be an inappropriate question and one  
5 would be an appropriate question.

6 MR. FREDERICK: They are both  
7 inappropriate questions. I allowed the one because you  
8 were making an effort to make a general statement.

9 MS. BERKOWER: Okay.

10 MR. FREDERICK: As to yes or no, whether  
11 you sought legal advice about preclearance in 2012, you  
12 may answer yes or no. But beyond that, I will instruct  
13 you not to answer on the basis of privilege.

14 THE WITNESS: What was the last part of  
15 your advice, I am sorry?

16 MR. FREDERICK: You may answer yes or no  
17 as to the specific question whether or not you sought  
18 legal advice about a -- related to preclearance in 2012.  
19 Beyond that, you may not -- I am instructing you not to  
20 reveal the substance of any communication related to  
21 legal advice.

22 A. Yes.

23 Q. Are there any procedures in the Senate for  
24 preparing committee reports?

25 A. Can you be more specific with your question?

235

1 There is -- committee reports are prepared.

2 Q. Are they prepared pursuant to any rules in the  
3 Senate, any of the Senate's rules?

4 A. For a committee report to be in order on a  
5 Senate Floor, it would have to comply with certain  
6 rules.

7 Q. What are those rules?

8 MR. FREDERICK: Object to the form.  
9 You may answer.

10 A. Generally, if I may refer to the rules.

11 Q. (By Ms. Berkower) Yes.

12 A. Generally, it is Rule 712. And the Senate Rule  
13 712 has a requirement on what printing a committee  
14 report should include and there is a number of things  
15 that may be required of bills depending on whether those  
16 items exist. And that's -- if there is other rules,  
17 there may be some indirect advice, I can't recall  
18 anything right now. But the most specific rule on  
19 committee reports is 712.

20 Q. Are committees required to prepare committee  
21 reports in advance of the committee meeting under the  
22 rules?

23 A. The way you characterize the question is a  
24 little misleading. I think there are components to a  
25 committee report that exist at various times and

236

1 different parts of the committee report are being worked  
2 on at different times. And it isn't an indication of  
3 whether the committee has actually taken action. Some  
4 things have to be prepared ahead of the committee's  
5 consideration. So there is not necessarily a sequential  
6 requirement.

7 Q. So you're saying that just as a logical matter,  
8 to be prepared for the meeting, the member might need to  
9 prepare part of the report ahead of time.

10 MR. FREDERICK: Object to the extent  
11 mischaracterizes the testimony.

12 A. Well, I think, for example, a committee cannot  
13 vote on a bill until it is in possession of the fiscal  
14 note. The LBB produces the fiscal note, has to have  
15 certain amount of time to produce that fiscal note and  
16 to analyze a bill. And it is very customary practice  
17 for the LBB to receive the request from the committee to  
18 work on a committee -- on the fiscal note before the  
19 bill sometimes is even set for hearing, maybe it has  
20 already been set, or they may ask at the time that they  
21 are setting. So parts of the committee report are  
22 produced, potentially, even before a Bill is set for  
23 hearing.

24 Q. Is an entire committee report prepared in its  
25 entirety ever before the committee meets?

237

1 MR. FREDERICK: Objection, relevance.  
 2 Objection, vague. You can answer.  
 3 A. Well, I think there is a form that's a standard  
 4 form that the committee clerk fills out indicating the  
 5 actions of the committee, that's absolutely prepared  
 6 ahead of time. The committee clerk might even have  
 7 already filled out information such as what the bill  
 8 number is and have it prepared so that can be filled out  
 9 after the committee takes its actions.  
 10 Q. (By Ms. Berkower) If a committee, are  
 11 amendments ever produced during a committee?  
 12 A. Yes.  
 13 Q. Are committee reports ever prepared in their  
 14 final form before amendments are introduced in a  
 15 committee hearing?  
 16 MR. FREDERICK: Objection, relevance.  
 17 A. Is a committee report produced -- ask your  
 18 question again, please.  
 19 Q. (By Ms. Berkower) Are committee reports ever  
 20 produced in their final form, created in their final  
 21 form prior to a committee hearing in which amendments  
 22 may be introduced to a bill?  
 23 MR. FREDERICK: Objection, relevance.  
 24 Q. (By Ms. Berkower) You may answer.  
 25 A. No.

238

1 Q. You don't know of any instance in which that's  
 2 occurred?  
 3 MR. FREDERICK: Same objection.  
 4 A. It wouldn't be possible.  
 5 Q. (By Ms. Berkower) Why would it not be  
 6 possible?  
 7 MR. FREDERICK: Objection, form.  
 8 A. Because the committee form indicating the  
 9 actions of the members could not possibly be filled out  
 10 ahead of time.  
 11 Q. How could they not be filled out ahead of time,  
 12 those committee forms?  
 13 A. Not in their completed state. The committee  
 14 form has to be signed by the clerk and by the chairman  
 15 of the committee. The votes by the members on a  
 16 particular bill have to be filled out on a form. The  
 17 committee report has to indicate the attachments  
 18 included with the committee report, whether there was a  
 19 fiscal note, whether there are amendments, whether there  
 20 is committee substitute, a form of the bill that's being  
 21 reported, so a committee report in its entirety could  
 22 not be produced ahead of a committee's action.  
 23 Q. Do you know if members of the Senate ever  
 24 choose not to do certain things in writing for fear of  
 25 creating a paper trail?

239

1 MR. FREDERICK: Objection, relevance.  
 2 Objection, argumentative. Objection, calls for  
 3 speculation. And, also, object to the extent it seeks  
 4 the mental impressions or thought process of any of the  
 5 legislator.  
 6 A. I don't know.  
 7 Q. (By Ms. Berkower) Do you know of any  
 8 discussions in which -- whether or not a certain action  
 9 would look good for preclearance was ever raised?  
 10 MR. FREDERICK: Objection, vague.  
 11 Objection, to the extent it calls for you to reveal the  
 12 substance of privileged communications or legislators  
 13 thought processes. If you can answer without revealing  
 14 those, you may do so.  
 15 A. Can you ask the question again.  
 16 Q. Can you read it back, please.  
 17 (Last question read back.)  
 18 MR. FREDERICK: Objection, vague. Same  
 19 objection on privilege. Objection, calls for  
 20 speculation and relevance.  
 21 A. I think the Senate considered that its actions  
 22 would -- would be part of a preclearance process.  
 23 Q. (By Ms. Berkower) If senators were to have an  
 24 agreement that no amendments would be accepted for a  
 25 particular bill, do you think -- strike that.

240

1 If it were the case that, for a  
 2 controversial piece of legislation, senators came to an  
 3 agreement that no amendments from the minority -- from  
 4 opponents to the bill would be permitted in advance of  
 5 consideration of those amendments, do you think that  
 6 would impact the preclearance process?  
 7 MR. FREDERICK: Objection. Calls for  
 8 speculation. Objection, calls for a legal conclusion.  
 9 Assumes facts not in evidence, relevance, argumentative.  
 10 MS. BERKOWER: You may answer.  
 11 A. I don't think senators can agree that  
 12 amendments are not permitted, so I would object to the  
 13 characterization of the question.  
 14 Q. (By Ms. Berkower) Representative Peña, are you  
 15 familiar with who he is?  
 16 A. More or less, he is a member of the House of  
 17 Representatives.  
 18 Q. During his deposition in this case, he  
 19 described SB 14 as, "a done deal."  
 20 Would you agree with that statement?  
 21 MR. FREDERICK: Objection, assumes facts  
 22 not in evidence, relevance.  
 23 A. No.  
 24 Q. (By Ms. Berkower) Why would you not agree with  
 25 that statement?

<p style="text-align: center;">241</p> <p>1 MR. FREDERICK: Object to form, assumes  2 facts not in evidence, relevance.  3 Also, you know what, I am going to  4 instruct you not to answer on the basis of privilege.  5 This is calling for your thoughts or mental impressions  6 about pending legislation. So I instruct you not to  7 answer on the basis of privilege.  8 A. I will take my attorney's advice.  9 Q. (By Ms. Berkower) Isn't it true that you  10 received an email if your Attorney, David Hanna, on  11 Wednesday, May 11th, 2011.  12 MR. FREDERICK: Objection, relevance.  13 Objection, vague.  14 A. I probably did, given that you showed me a copy  15 of an email written that shows it was written to me on  16 that date.  17 Q. Isn't it true that that email contained advice  18 concerning the preclearance process?  19 MR. FREDERICK: Objection. Object. This  20 is asking for the substance of attorney-client privilege  21 communication. I instruct you not to answer.  22 MS. BERKOWER: I think that's a privilege  23 of a question.  24 MR. FREDERICK: No. I disagree. I will  25 instruct her not to answer.</p>	<p style="text-align: center;">243</p> <p>1 provided today for any reason?  2 A. Yes. I -- the very, very beginning of this  3 deposition, Adam had asked me about my employment  4 history and I had forgotten that when I worked for the  5 Senator in Waco, I had taken a brief amount of time off  6 from my State job to work on his campaign in a  7 fundraising capacity for him back in 1994, and I had  8 completely forgotten that I had done that for a  9 six-month time period and remembered. And I have  10 neglected, it was an oversight for me to mention it. I  11 just don't think about that, because it was a very short  12 duration. So I would like to add that to the record as  13 part of my answer to his question.  14 Q. (By Ms. Berkower) Okay. And getting back to  15 your answer to the question before that. You said you  16 weren't sure what you would think three or four weeks  17 from now. Is that an accurate summary of your answer?  18 A. I think so. I think the question asks for me  19 to speculate on what my answer would be in the future  20 and I think I would not like to speculate.  21 Q. Are you saying it is possible that evidence  22 that you -- or information that you obtained in the  23 interim time may change your view of whether SB 14 has a  24 discriminatory purpose?  25 MR. FREDERICK: Objection,</p>
<p style="text-align: center;">242</p> <p>1 Q. (By Ms. Berkower) At any time since the  2 passage of SB 14, have you come to believe that it was  3 passed with any discriminatory purpose?  4 MR. FREDERICK: Objection, relevance.  5 Q. You can answer.  6 A. No.  7 Q. At any time since the passage of SB 14, have  8 you come to believe that it will have a retrogressive  9 effect on minority voters?  10 MR. FREDERICK: Objection, relevance.  11 A. No.  12 Q. (By Ms. Berkower) If you are called to trial,  13 will you testify that SB 14 has no discriminatory  14 purpose?  15 MR. FREDERICK: Object to the extent this  16 is asking her to tell you what she would testify about  17 at trial. I believe the question is improper. I would  18 object on relevance. Calls for speculation.  19 You can answer, if you can.  20 A. I don't think I can answer.  21 Q. (By Ms. Berkower) You can't answer because you  22 don't understand the question?  23 A. I don't know what I am going to think in three  24 or four weeks or whenever you would have a trial.  25 Q. Do you want to change any of the answers you</p>	<p style="text-align: center;">244</p> <p>1 mischaracterizes the testimony. Calls for speculation,  2 relevance.  3 A. I am not saying that anything is possible. I  4 just don't know what I am going to think in a month, or  5 whenever, I am not even aware of the actual timeline for  6 this trial. So I -- you're asking me to speculate, and  7 I really haven't even given any thought to your  8 question. And I think your question would require a lot  9 of thought.  10 Q. (By Ms. Berkower) Well, then, I will ask.  11 Do you think today that SB 14 has  12 discriminatory purpose?  13 MR. FREDERICK: Objection, relevance.  14 A. I don't know.  15 Q. (By Ms. Berkower) Why don't you know?  16 A. I don't know enough about the legislation.  17 Based on what I heard in public debate, I would say the  18 answer is, no.  19 Q. But as of today, you're not sure?  20 MR. FREDERICK: Objection,  21 mischaracterizes the testimony. Objection, relevance.  22 A. I think you're asking me the purpose of a bill  23 and I -- you know, based on the stated purposes that I  24 have heard, I don't think there was a discriminatory  25 purpose.</p>

245

1 Q. (By Ms. Berkower) Sitting here today, do you  
2 think the SB 14 has a discriminatory effect?

3 MR. FREDERICK: Objection, relevance.

4 A. I don't know enough about the legislation or  
5 its effects to provide an answer; I don't know.

6 Q. (By Ms. Berkower) Is there anything else you  
7 want to share?

8 A. No, I don't think so.

9 MS. BERKOWER: Okay. Subject to the  
10 resolution of any motions that might arise from this  
11 deposition testimony, I am going to leave it open,  
12 subject to those potential motions but otherwise I am  
13 done on questioning this witness.

14 MR. FREDERICK: Okay. I have a brief  
15 Direct Examination.

16 Could we go off the record for about five  
17 minutes, take a quick break.

18 MS. BERKOWER: Sure.

19 (Brief recess.)

20 EXAMINATION

21 BY MR. FREDERICK:

22 Q. Good afternoon, Ms. Davis.

23 I have a brief Direct Examination. You  
24 understand that you are still under oath, correct?

25 A. Yes.

246

1 Q. Now, as Senate Parliamentarian, is one of your  
2 job duties to provide advice on the Senate rules?

3 A. Yes.

4 Q. Is your job to provide advice regarding the  
5 Senate rules to any senator who requests such advice?

6 A. Yes.

7 Q. Is it, also, part of your job to assist  
8 senators with Senate procedure?

9 A. Yes.

10 Q. Is it common for you to discuss Senate  
11 procedure regarding particular bills with senators?

12 A. Yes, very common.

13 Q. So is it common for you to discuss the timing  
14 or the procedure of a particular Senate bill with  
15 senators?

16 A. Yes.

17 Q. Can you estimate how frequently you discuss the  
18 timing or procedure of a particular bill with senators?

19 A. It's most of what I do every day on the Senate  
20 floor is discuss the timing of bills, the procedures  
21 related to how they are considered. Most of -- that's  
22 most of my job right there.

23 Q. I want to look briefly at what was introduced  
24 as, I believe this was U.S. Exhibit 80 for the record.  
25 This was a letter.

247

1 A. Oh, here it is.

2 Q. If you will look down in the -- on the first  
3 page at the last -- the last sentence there, it is a  
4 separate paragraph. Do you see where it says -- it is  
5 referring to a previous session two years ago when  
6 senators knew a month or more in advance that full  
7 hearing on this legislation would take place?

8 Do you see that?

9 A. Yes.

10 Q. Do you know what legislation that the letter is  
11 referring to here?

12 A. I would assume it was referring to Senate Bill  
13 362 from the 2009 Session.

14 Q. Do you recall how long the Committee of the  
15 Whole met to consider SB 362 in 2009?

16 A. Trying to decide how to quantify a little bit  
17 short of forever. It was -- I don't remember exactly  
18 how many hours; but it was all through one day and all  
19 through the night and into the morning.

20 Q. Was it more than 12 hours?

21 A. Definitely, yes.

22 Q. Was it more than 24 hours?

23 A. I don't remember specifically what time we  
24 started, the days, and when it ended but it was probably  
25 close to that ballpark.

248

1 Q. But it went all day and all through night.

2 A. All through the night.

3 Q. If you will turn to the second page, please.

4 Down below the signature, does this show that there is  
5 someone copied on this letter from Senator Van de Putte?

6 A. Yes.

7 Q. And who did Senator Van de Putte copy on this  
8 letter?

9 A. The U.S. Department of Justice Voting Rights  
10 Section.

11 Q. To your knowledge, did the Senate expect the  
12 Department of Justice to attend the Committee of the  
13 Whole meeting in 2011?

14 A. No. I would not say they would have expected  
15 their attendance.

16 Q. Is it common in your experience for the  
17 Department of Justice to be copied on correspondence  
18 among senators about committee hearings?

19 A. No, it is not common.

20 Q. Do you have any knowledge why Senator Van de  
21 Putte -- Van de Putte copied the Department of Justice  
22 on her letter to Senator Duncan?

23 A. As I have stated previously, I think the Senate  
24 was aware that the bill would be subject to preclearance  
25 either at the Department of Justice or before a court.



<p style="text-align: center;">249</p> <p>1 And I would guess Senator Van de Putte wanted to make</p> <p>2 the Department of Justice aware of her communications</p> <p>3 with Senator Duncan.</p> <p>4 Q. And your testimony is -- is that based on any</p> <p>5 personal communication with Senator Van de Putte about</p> <p>6 this letter?</p> <p>7 A. No.</p> <p>8 Q. That's just based on your -- your review of the</p> <p>9 letter?</p> <p>10 A. Yes.</p> <p>11 Q. If you could turn, briefly, to what was marked</p> <p>12 as -- I believe it was the League Exhibit 15. This is</p> <p>13 an excerpt of the 2011 Senate rules.</p> <p>14 If you will turn to the second page of</p> <p>15 that exhibit and look at Rule 5.11(a). And it says,</p> <p>16 "Any bill, resolution, or other measure may on any day</p> <p>17 be made a special order for a future time of the session</p> <p>18 by affirmative vote of two-thirds of the members</p> <p>19 present."</p> <p>20 Is that an accurate reading?</p> <p>21 A. Yes.</p> <p>22 Q. What does it mean when it says, "a future time"</p> <p>23 in that provision?</p> <p>24 A. Well, I think it probably specifies future time</p> <p>25 because that's the purpose of making the special order</p>	<p style="text-align: center;">251</p> <p>1 could suspend the order of business and consider a bill</p> <p>2 any time it chooses.</p> <p>3 Q. I want to talk about the Regular Order of</p> <p>4 Business for a minute. Do the Senate rules give the</p> <p>5 Presiding Officer the authority to change the order of</p> <p>6 bills in the Regular Order of Business?</p> <p>7 A. No. He does not have that authority under the</p> <p>8 rules.</p> <p>9 Q. How many votes do the Senate rules require to</p> <p>10 pass a bill under the Regular Order of Business?</p> <p>11 A. For general bills would be the majority of the</p> <p>12 members present and voting.</p> <p>13 Q. In the 2011 Legislative Session, to the best of</p> <p>14 your recollection, how many bills were ahead of Senate</p> <p>15 Bill 14 in the Regular Order of Business?</p> <p>16 A. 2011, there were no bills ahead of Senate Bill</p> <p>17 14.</p> <p>18 Q. Move on briefly to the local and uncontested</p> <p>19 calendar. Can you -- can a bill be removed from the</p> <p>20 local and uncontested calendar?</p> <p>21 A. Yes.</p> <p>22 Q. How can a bill be removed from the local and</p> <p>23 uncontested calendar?</p> <p>24 A. Rules provide that any two members can request</p> <p>25 in writing that a bill be removed from the local and</p>
<p style="text-align: center;">250</p> <p>1 is to establish when a particular bill might be taken up</p> <p>2 through special order. If a Bill is part of the Regular</p> <p>3 Order of Business, it might be taken up on a Tuesday, it</p> <p>4 could be taken up on a Wednesday, it could be taken up</p> <p>5 on a Friday, Saturday. The regular calendar isn't</p> <p>6 specific as to days; making a special order allows, or</p> <p>7 its purpose is to -- to give notice of a particular time</p> <p>8 or day.</p> <p>9 Q. Can a special order be taken up immediately?</p> <p>10 A. I suppose it's possible to set a special order</p> <p>11 for an hour from now, if you wanted to make a motion</p> <p>12 like that on the Senate Floor.</p> <p>13 Q. Okay. Earlier, there was a discussion of a</p> <p>14 limitation in the Texas Constitution on consideration of</p> <p>15 legislation within the first 60 days of the session.</p> <p>16 Are you familiar with that provision of</p> <p>17 the Constitution?</p> <p>18 A. That's the constitutional order of business.</p> <p>19 Q. Does that limitation that applies to the first</p> <p>20 60 days of a session prevent a committee from reporting</p> <p>21 a bill out of committee during the first 60 days of the</p> <p>22 session?</p> <p>23 A. Not during the first 60 days. The limitation</p> <p>24 for committees to meet and consider legislation is</p> <p>25 during the first 30 days. And certainly the Senate</p>	<p style="text-align: center;">252</p> <p>1 uncontested calendar.</p> <p>2 Q. How many votes does Senate rules require to</p> <p>3 pass a bill that's on the local and uncontested</p> <p>4 calendar?</p> <p>5 A. The same as any bill on any calendar for a</p> <p>6 general bill, would be a majority of the members.</p> <p>7 Q. Move on briefly to House Bill days. Can you</p> <p>8 explain what a "House Bill Day" is in the Senate?</p> <p>9 A. Yes. The Senate rules provide for a deference</p> <p>10 to House bills and joint resolutions on calendar</p> <p>11 Wednesdays and Thursdays, the effect of which is that</p> <p>12 the calendar flips and all -- any House bills and joint</p> <p>13 resolutions that are on the Regular Order of Business</p> <p>14 would now be above all Senate bills as opposed to other</p> <p>15 calendar days.</p> <p>16 Q. How many votes do the Senate rules require to</p> <p>17 pass a House Bill on a House Bill Day?</p> <p>18 A. Like any other bill, be a majority of the</p> <p>19 members present and voting.</p> <p>20 Q. What vote is required to adopt Senate rules?</p> <p>21 A. To adopt permanent rules or temporary rules, it</p> <p>22 would be majority of the members present and voting in</p> <p>23 the Senate.</p> <p>24 Q. I want to talk briefly about Blocker Bills.</p> <p>25 Do the Senate rules require a two-thirds</p>



261

1 the Senate's resolving into the Committee of the Whole  
 2 with respect to considering bills?  
 3 A. I think the effect of the Senate considering  
 4 bills in the Committee of the Whole is consistent with  
 5 the purposes of a Committee of the Whole and that is to  
 6 give all 31 members of the Senate equal rights of  
 7 participation in a committee process. Those rights  
 8 include the right to unlimited debate. The right to  
 9 question witnesses, if there are witnesses. The rights  
 10 to amend. They are one of 31 in that they have an equal  
 11 right of participation as opposed to a smaller committee  
 12 venue that might have a limited membership of the  
 13 Senate.  
 14 Q. Can others -- can other Senate committees meet  
 15 while the Committee of the Whole is convened?  
 16 A. No, they cannot.  
 17 Q. And is that required by the rules?  
 18 A. Yes.  
 19 Q. Is the Committee of the Whole something that is  
 20 unique to the Texas Senate?  
 21 A. Not at all. It is -- has rich history going  
 22 back to at least -- at least Parliament. It is used  
 23 heavily in legislative bodies throughout this country.  
 24 It is used in the Congress. There are many precedents  
 25 in Congress on the Committee of the Whole which we would

262

1 look to. It is used extensively by some legislatures to  
 2 consider bills. And it is not at all unique to the  
 3 Texas Senate.  
 4 Q. In the time that you have worked in the Texas  
 5 Senate, how often has the Senate resolved into a  
 6 Committee of the Whole?  
 7 A. I am trying to think. I don't know if I could  
 8 say exactly how many times they moved to resolve.  
 9 Certainly, while I have worked in the Senate, I recall  
 10 it happening in the early 1990s. I recall it happening  
 11 in 1999, 2001. I think we used it in 2003 and 2004,  
 12 certainly, in 2009 and 2011; so it's happened somewhat,  
 13 I wouldn't say frequently, but it has been used a lot.  
 14 Q. Generally speaking, is there a particular type  
 15 of legislation that tends to be considered by the Committee  
 16 of the Whole?  
 17 A. Yes. I think the Senate chooses to use the  
 18 Committee of the Whole process for bills which it thinks  
 19 would benefit from the greater deliberation that the  
 20 participation by 31 members could provide for a piece of  
 21 legislation. There are some bills for which each member  
 22 of the Senate has such great interest, they would want  
 23 to participate in that way and want to be able to  
 24 participate in the committee process, and so the  
 25 Committee of the Whole is a convenient device to allow

263

1 for that greater participation by the Senate and it is  
 2 used for those purposes.  
 3 Q. I want to move back very briefly to the  
 4 two-thirds vote mechanism in the Senate.  
 5 We were talking earlier about the use of  
 6 the two-thirds vote to bring the bills to the floor. In  
 7 your experience as Parliamentarian and as a general  
 8 matter, do you have an understanding of why the Senate  
 9 sometimes uses the two-thirds vote mechanism to bring --  
 10 bring bills to the floor.  
 11 A. I think that that tradition is a tradition that  
 12 evolves, and it has evolved from since the late '40s and  
 13 early 1950s, and at times has been more heavily used  
 14 than at other times. I think probably, initially, it  
 15 was somewhat of an accident, maybe even on purpose that  
 16 they discovered, you know, probably members were  
 17 attempting to load the calendar so they didn't get to  
 18 particular bills that they were opposed to. I think  
 19 they discovered that as it became a practice, that I  
 20 think, you know, oftentimes the requirement to get a  
 21 two-thirds vote would yield legislation that has been  
 22 more carefully developed, perhaps, is the word.  
 23 Certainly, to get two-thirds vote, you know, a member  
 24 would probably have to make more concessions or would  
 25 have to work a little harder to get the bill in the

264

1 right shape for it to be able to be considered. I think  
 2 any members would say that, it is a -- one of the  
 3 purposes of using the two-thirds tradition that it  
 4 yields better legislation. That's not always the case.  
 5 And I think that the fact that the rules continue to  
 6 provide for regular orders of business and mechanisms  
 7 that allow a bill to be brought forward without a  
 8 two-thirds vote, it's the Senate's choice that, that  
 9 two-thirds process doesn't always work.  
 10 Q. Is there a calendars committee in the Senate?  
 11 A. There is not an official calendars committee in  
 12 the Senate.  
 13 Q. In your experience, is the use of the  
 14 two-thirds vote mechanism used as something of a  
 15 calendaring mechanism by the Senate?  
 16 A. My belief is that, that is its principal  
 17 purpose, that the effect of the Senate's sort of  
 18 imposing a two-thirds requirement on itself when it is  
 19 not required to do so is that it can continue to use a  
 20 Regular Order of Business which would be unwieldy when  
 21 you have lots and lots of bills on it. And most  
 22 legislative bodies use a calendar system on the  
 23 Calendars Committee. And I think the Senate has just  
 24 developed its system. And the great benefit to the  
 25 members that they believe this, and I believe this, is

265

1 that they are one of 31 members on a quasi Calendars  
2 Committee as opposed to the type of system such as that  
3 is in the Texas House of Representatives where you would  
4 have a much smaller number of members on the Calendars  
5 Committee that would control the flow of legislation.  
6 So this tradition, in large part, is really in its  
7 essence a calendar system where each of the members of  
8 the Senate have equal participation in the development  
9 and the flow of legislation on a daily basis in the  
10 Senate.

11 Q. Is the two-thirds vote mechanism used when the  
12 Senate meets in special session?

13 A. It can be. There are many instances where the  
14 Senate follows its Regular Order of Business during  
15 regular -- during special sessions.

16 Q. In a special session, does the Senate,  
17 typically, consider fewer bills than it would consider  
18 in a Regular Session?

19 A. Yes. Because it is jurisdiction in its ability  
20 to consider legislation in a special session is set by  
21 the Governor in accordance with the Constitution.

22 The Governor has the authority to call a  
23 special session, a Senate does not, the Legislature does  
24 not.

25 The Governor would, when calling a special

267

1 follow its calendars on occasions where -- to not do so  
2 would, potentially, harm -- could harm the state, could  
3 delegate its duties, the Legislature's duties to someone  
4 else. You know, sometimes the majority of the Senate  
5 feels that it's -- and it is a difficult decision for  
6 them. But some issues are so important and that  
7 perhaps, you know, might even say lines have been drawn  
8 in the sand and that the two-thirds process will not  
9 yield any results, further results.

10 Q. Is the Senate's custom of using a two-thirds  
11 vote procedure to bring many bills to the floor, is that  
12 intended to allow a political minority of senators to  
13 block legislation?

14 MS. BERKOWER: Could she read back that  
15 question, I didn't hear the first part.

16 (Last question read back.)

17 A. No. I don't think that that is the Senate's  
18 intent with the two-thirds tradition.

19 Q. To the best of your recollection, as you sit  
20 here today, in your time as Senate Parliamentarian, how  
21 many bills has the Senate passed without using the  
22 two-thirds vote mechanism?

23 A. Say that's probably the number of bills being  
24 20 to 25 range.

25 Q. Does passing a bill without using the

266

1 session under the Constitution has to provide the  
2 subject matters for consideration by the Legislature  
3 during a special session. And only those items, say,  
4 those bills that fall within that subject category can  
5 be considered by the Legislature; so the result is far  
6 fewer bills.

7 Q. In your experience, does that make the calendar  
8 easier to manage in the Senate?

9 A. Yes.

10 Q. We were discussing times when the Senate  
11 chooses to proceed without the two-thirds mechanism.

12 As a general matter, based upon your  
13 experience in the Senate, when the Senate chooses to  
14 proceed without using the two-thirds mechanism to bring  
15 a bill forward, why does -- why would it choose to do  
16 that?

17 A. I think that, in general, the times that it has  
18 chosen to proceed outside of the two-thirds tradition  
19 usually are times when a piece of legislation can no  
20 longer progress. Usually it -- you know, it may be a  
21 controversial piece of legislation. Lots of times these  
22 bills have been around multiple sessions, there has been  
23 lots of attempts to get consensus with a two-thirds  
24 vote, and those attempts have failed. And I think the  
25 Senate has chosen to proceed with a majority vote and

268

1 two-thirds vote mechanism circumvent the Senate rules?

2 A. I think it's -- I would characterize it as  
3 following the rules and strict enforcement of the rules.

4 Q. Is passing a bill without using the two-thirds  
5 vote mechanism contrary in any way to the Senate rules?

6 A. Passing without a two-thirds vote? No, it is  
7 not contrary to the rules.

8 Q. Is passing a bill without requiring a  
9 two-thirds vote consistent with the Senate rules?

10 A. Yes.

11 Q. To the extent the Texas Senate enacted Senate  
12 Bill 14 without using a two-thirds vote mechanism to  
13 suspend the Regular Order of Business, did it follow  
14 existing Senate rules and procedures?

15 A. Yes.

16 Q. To the extent the Texas Senate chose not to  
17 follow the custom of requiring a two-thirds vote to  
18 suspend the Regular Order of Business to consider Senate  
19 Bill 14, did it follow existing Senate rules and  
20 procedures?

21 A. Yes.

22 Q. When the Senate -- pardon me.

23 When the Texas Senate passed Senate Bill  
24 14, did it violate any Senate rules?

25 A. Not that I am aware of. I don't believe -- I

269

1 don't believe that it did.  
 2 Q. To the best of your understanding, was the  
 3 Texas Senate's consideration and passage of Senate Bill  
 4 14 consistent with existing Senate rules and procedures?  
 5 A. Yes.  
 6 Q. As you sit here today, do you have any reason  
 7 to believe that the Texas Legislature enacted Senate  
 8 Bill 14 with a discriminatory purpose?  
 9 A. No.  
 10 Q. As you sit here today, do you have any reason  
 11 to believe that Senate Bill 14 will have a  
 12 discriminatory effect?  
 13 A. No.  
 14 MR. FREDERICK: I have no further  
 15 questions.  
 16 MS. BERKOWER: All right. I have some  
 17 cross on that.  
 18 EXAMINATION  
 19 BY MS. BERKOWER:  
 20 Q. I will try to follow the same order  
 21 Mr. Frederick used.  
 22 Turn your attention to the Attorney  
 23 General's Exhibit No. 80, a letter from Senator Van de  
 24 Putte. I don't know where my copy of it went, but.  
 25 Do you know if an invitation was extended

270

1 to anyone from the Department of Justice to attend the  
 2 Committee of the Whole hearing in 2011 on voter ID?  
 3 A. I don't know.  
 4 Q. Do you know if, in fact, anyone from the U.S.  
 5 Department of Justice attended that hearing?  
 6 A. I don't know.  
 7 Q. Have you ever heard of someone from the U.S.  
 8 Department of Justice attending Texas Senate hearing for  
 9 any legislation?  
 10 A. I don't know.  
 11 Q. Do you recall ever seeing anyone from the U.S.  
 12 Department of Justice at any Texas Senate hearing in  
 13 your time as Parliamentarian?  
 14 A. If I had seen someone, I wouldn't recognize  
 15 them.  
 16 Q. Well, announced as part of the record.  
 17 A. I don't recall.  
 18 Q. You said that you recalled in 2009, the Senate  
 19 had spent almost forever or something of that nature,  
 20 debating SB 362, is that an accurate characterization?  
 21 A. Yes. And that would be, and I don't remember  
 22 the question was qualified this way, but that was  
 23 certainly in the Committee of the Whole.  
 24 Q. In the Committee of the Whole.  
 25 A. Uh-huh.

271

1 Q. Debate in one Senate session doesn't carry over  
 2 to debate in a subsequent session, does it?  
 3 A. Not usually. But in this case, it somewhat  
 4 did.  
 5 Q. How is that?  
 6 A. The senators chose to adopt the record made in  
 7 2009 as part of their record in 2011, the Senate chose  
 8 to do that.  
 9 Q. But the bills were different; is that correct?  
 10 A. They may have been. I am not super familiar  
 11 with the content of the bills anymore. I don't  
 12 remember.  
 13 Q. So it was part of the record in 2011, as it was  
 14 adopted by the senators, is that what you're saying?  
 15 Sorry, I will clarify. The 2009 record  
 16 from the Committee of the Whole was adopted as part of  
 17 the record from the 2011 Committee of the Whole meeting?  
 18 A. I believe so. I think that motion was made in  
 19 the Committee of the Whole. It is possible it was made  
 20 on -- it had to have been in the Committee of the Whole  
 21 and not in the full Senate.  
 22 Q. Do you remember anything in the public record  
 23 explaining why the choice was made to adopt that 2009  
 24 testimony in 2011?  
 25 A. I don't remember very specifically what

272

1 their -- I am sure -- I am sure they stated why; I don't  
 2 remember exactly or even generally what they said.  
 3 Q. As a new bill introduced in 2011, SB 14 was  
 4 procedurally entitled to full consideration by the  
 5 Senate, is that accurate? And I don't mean  
 6 consideration by the full Senate but entitled to all of  
 7 the rules for -- relating to a bill's consideration that  
 8 any other bill introduced in a new session of the  
 9 Legislature would be entitled to.  
 10 A. Yes.  
 11 Q. So just because a bill on a similar topic was  
 12 debated in 2009 doesn't mean in any way that in 2011,  
 13 another bill on the same topic would already be viewed  
 14 under the rules as having been considered already?  
 15 MR. FREDERICK: Objection, vague.  
 16 A. I think for parliamentary purposes, I think the  
 17 answer is no, but I am almost going to have to ask you  
 18 to repeat the question, and I am sorry.  
 19 Q. (By Ms. Berkower) That's okay. I will  
 20 rephrase it to be clear.  
 21 A. Okay.  
 22 Q. Just because a bill -- if a bill is considered  
 23 on a particular topic in one legislative session and  
 24 then another -- and it doesn't pass, and then in the  
 25 next legislative session, another bill, a new bill is

273

1 introduced on the same topic, the Senate's prior  
 2 consideration of a bill on the same topic doesn't  
 3 foreclose consideration of the new bill on the same  
 4 topic, does it?  
 5 A. No, it wouldn't foreclose that under the rules.  
 6 Q. In fact, it has no effect whatsoever under the  
 7 rules; is that correct?  
 8 A. That's correct.  
 9 Q. You testified a few minutes ago that there were  
 10 no bills ahead of SB 14 when it was considered for a  
 11 full vote before the Senate; is that correct?  
 12 MR. FREDERICK: Objection,  
 13 mischaracterizes the testimony.  
 14 A. What I said was, that there were no other bills  
 15 on the calendar when Senate Bill 14 was considered.  
 16 Q. Okay. So it was first in line for  
 17 consideration.  
 18 A. Yes.  
 19 Q. Isn't part of why it was first in line for  
 20 consideration because it had been designated emergency  
 21 legislation?  
 22 A. I think -- well, I mean, I think -- I think  
 23 that certainly could be a reason. You know, the Senate  
 24 could have -- they -- I think that's probably right, as  
 25 I think about it, yes.

274

1 (Attorney Ezra Rosenberg enters room.)  
 2 Q. And to be clear, isn't it true that if a  
 3 blocker bill is in place and to be heard out of order, a  
 4 two-thirds majority would be required?  
 5 MR. FREDERICK: Objection, vague.  
 6 A. For a bill to be taken out of its regular order  
 7 of -- calendar order to be considered by the Senate, the  
 8 rules require a two-thirds vote of the members present  
 9 and voting to take a bill out of its calendar order.  
 10 Q. (By Ms. Berkower) Is it easier to get a vote  
 11 on a bill that is first in line rather than a bill that  
 12 is second, third, or anywhere lower in the order in  
 13 line?  
 14 MR. FREDERICK: Objection, calls for  
 15 speculation.  
 16 A. That would depend on the bill.  
 17 Q. Well, procedurally, are there fewer procedural  
 18 hurdles to get over if a bill is first in line for  
 19 consideration for a vote on the full -- before the full  
 20 Senate?  
 21 A. To pass a bill, it would be the same vote  
 22 requirement wherever it is on the calendar.  
 23 Q. Well, would it be heard ahead of the other  
 24 bills?  
 25 A. If it is heard -- if it is heard in its

275

1 calendar order then it would require a majority in the  
 2 members present and voting to pass the bill.  
 3 Q. A bill that was second in line in that instance  
 4 would have to, first, have a majority of two-thirds  
 5 senators vote to hear it out of order, isn't that true?  
 6 A. Yes. If it's considered out of order.  
 7 Q. So the procedural hurdle of having to get over  
 8 that two-thirds majority does not exist for a bill  
 9 that's first in line to be heard for a vote.  
 10 A. I think its position on the calendar means that  
 11 it can be taken up and the rules would require for it to  
 12 be taken up before the other bills.  
 13 Q. Without a two-thirds majority of senators  
 14 present and voting?  
 15 MR. FREDERICK: Objection, form.  
 16 A. I think the Senate has calendars and it is,  
 17 under the rules, required to follow those calendars  
 18 except for when it suspend the rules to take a bill up  
 19 out of the calendar order.  
 20 Q. (By Ms. Berkower) As a matter of practice, do  
 21 senators use blocker bills combined with the two-thirds  
 22 rule to prevent a vote on certain bills?  
 23 MR. FREDERICK: I am going to object on  
 24 the basis of privilege only to the extent that it would  
 25 require you to reveal what any particular legislature --

276

1 legislator was thinking or intending to do. But you may  
 2 answer generally, if you can do so without revealing the  
 3 privilege matters.  
 4 A. I think, generally, a bill that's at the top of  
 5 the calendar and it is used as a blocker would have the  
 6 effect of requiring a two-thirds vote for bills that are  
 7 lower in calendar order beneath that bill.  
 8 Q. Have you seen senators use those procedural  
 9 hurdles to prevent a vote on certain bills?  
 10 MR. FREDERICK: The same cautionary  
 11 instruction. But I don't believe this calls for  
 12 privilege matters.  
 13 A. Did you say certain bills?  
 14 Q. On any bill.  
 15 A. On any bill. I think that, generally speaking,  
 16 a blocker bill is a decision to be used as a  
 17 parliamentary device where you're using the first bill  
 18 to require a two-thirds vote to consider other bills, I  
 19 think that's a general decision by the Senate and the  
 20 Presiding Officer and it works, and its intent is for  
 21 general purposes of managing the Senate's calendar.  
 22 Q. Okay. As a practical matter, though, have you  
 23 ever seen a senator capitalize on that to prevent a vote  
 24 on a particular piece of legislation?  
 25 A. "Capitalize." Do members choose to vote no or

277

1 to commit to vote no to bring a certain -- to suspend  
 2 the Regular Order of Business to take up a bill, yes,  
 3 that's what they do, that's part of the calendar  
 4 mechanism, that's why they would consider themselves to  
 5 be part of the calendar process in the Senate.

6 Q. How often does a bill that passes in the Senate  
 7 die in the House, just generally?

8 A. I would say -- I am not sure I could tell you  
 9 percentages. I would say that, of the House bills that  
 10 the Senate receives, the Senate passes half of their  
 11 bills. And of the Senate bills that the House passes,  
 12 they would pass fewer than half of the Senate bills they  
 13 actually receive. How much fewer, I couldn't tell you  
 14 the percentage but I know it is less.

15 Q. How often does a bill die in the conference  
 16 committee?

17 A. You know, I -- I am not sure if I could answer  
 18 that. I mean, depends on the number of conference  
 19 committees that we would have. It happens. We may, you  
 20 know, in session to session basis, you could have --  
 21 generally you're in the 100 range on conference  
 22 committees for a Regular Session, 100, 150, I mean, the  
 23 number could vary. There are probably quite a few bills  
 24 that die in conference committee, but there are  
 25 certainly a lot more that survive.

278

1 Q. Is it fair to say that, as the bill gets  
 2 further and further in the legislative process, it has  
 3 less and less chance of dying?

4 A. I don't think I would characterize it that way.

5 Q. Is it fair to say that once a -- okay.

6 You testified a few minutes ago that 20 to  
 7 25 bills between the time -- during the time that you  
 8 have been Parliamentarian were heard by the Committee of  
 9 the Whole.

10 Do you remember testifying to that a few  
 11 minutes ago?

12 A. I think --

13 MR. FREDERICK: Objection,  
 14 mischaracterizes the testimony.

15 A. I hope I didn't misspeak. I think the question  
 16 was: How many bills had been considered? Maybe we  
 17 should have the court reporter read that question  
 18 because I don't think it was related to the Committee of  
 19 the Whole.

20 Q. You know what, you're right, it was not. I  
 21 withdraw that question. Sorry.

22 Would you agree that the -- part of the  
 23 two-thirds, that the two-thirds rule requires senators  
 24 to build consensus before a bill gets heard for a final  
 25 vote?

279

1 A. I think the legislative process requires  
 2 senators to form a consensus on passing any bill.

3 Q. Well, a few minutes ago, you were testifying  
 4 about the two-thirds rule and you said that, a bill  
 5 that's subjected to the two-thirds rule often will have  
 6 more concessions made to opponents than other bills.

7 Do you remember testifying to that?

8 A. Yes.

9 Q. Would you agree then that the two-thirds bill  
 10 often requires consent -- is a mechanism that enhances  
 11 consensus built during the legislative process?

12 A. I think that the difference and the number of  
 13 votes required makes -- does make a difference. Needing  
 14 16 votes instead of 21 makes a difference. It is a five  
 15 vote difference if everybody is there. And certainly if  
 16 those five people are not willing to vote unless a  
 17 concession is made or a change is made, might not even  
 18 be a concession, I mean, it could be an improvement to  
 19 the bill in some way, I -- you know. So, you know, I  
 20 think it builds consensus, yes.

21 Q. You said that one of the reasons senators may  
 22 choose to suspend the two-thirds vote mechanism or  
 23 two-thirds rule or tradition, however we have been  
 24 referring to it, is that the majority may feel that  
 25 failure to pass a particular type of legislation would

280

1 harm the state.

2 Do you remember testifying to that a few  
 3 minutes ago?

4 A. Yes.

5 Q. Do you believe that opposition to bills harms  
 6 the state?

7 A. I think continued opposition to bills that are  
 8 necessary to the functioning of the state, yes,  
 9 ultimately harms the state.

10 Q. What are examples of bills that are necessary  
 11 to the functioning of the state?

12 MR. FREDERICK: Objection, vague.

13 A. An example of that would be the state's general  
 14 budget.

15 Q. Do you believe that opposition to voter ID  
 16 legislation was harm -- was a harm to the state?

17 MR. FREDERICK: Objection, relevance.  
 18 You may answer.

19 A. I don't have an opinion on voter ID and the  
 20 policy of voter ID. I think earlier I gave examples of  
 21 why the Senate might choose to forgo its two-thirds  
 22 tradition and to observe its calendar systems. And I  
 23 gave examples of what they thought when they did this  
 24 with voter ID is, you know, it was really a question for  
 25 them. I don't -- I don't think I can answer that



<p style="text-align: center;">281</p> <p>1 question.</p> <p>2 Q. (By Ms. Berkower) Okay. I think I got your</p> <p>3 testimony wrong before, when I asked you about the 20 to</p> <p>4 25 bills in the context of the Committee of the Whole.</p> <p>5 I think you were actually saying, if I remember</p> <p>6 correctly, and correct me if I am wrong, that</p> <p>7 approximately 20 to 25 bills during your time as</p> <p>8 Parliamentary were passed without the two-thirds rule;</p> <p>9 is that accurate?</p> <p>10 A. Yes.</p> <p>11 Q. How many total bills were passed during the</p> <p>12 time you have been Parliamentary?</p> <p>13 A. How many total bills in the Senate?</p> <p>14 Q. Yes.</p> <p>15 A. I would not be able to accurately answer that</p> <p>16 question, I don't know.</p> <p>17 Q. Is it more than 100?</p> <p>18 A. Yes.</p> <p>19 Q. More than 1,000?</p> <p>20 A. Yes.</p> <p>21 Q. More than 5,000?</p> <p>22 A. I don't know.</p> <p>23 Q. More than 2000?</p> <p>24 A. It is probably more than 2000.</p> <p>25 Q. Mr. Frederick asked you a number of questions</p>	<p style="text-align: center;">283</p> <p>1 MR. FREDERICK: Objection, assumes facts</p> <p>2 not in evidence.</p> <p>3 A. I think that many of the bills were considered</p> <p>4 out of the regular calendar order.</p> <p>5 Q. (By Ms. Berkower) But unless two-thirds vote</p> <p>6 was successful, would those bills have been able to be</p> <p>7 considered out of the regular calendar order?</p> <p>8 A. The rules do not allow for a bill to be</p> <p>9 considered out of the regular calendar order unless the</p> <p>10 rules are suspended.</p> <p>11 Q. And that requires a two-thirds vote; is that</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. So is it safe to say that the default under</p> <p>15 those rules is a two-thirds vote is required to suspend</p> <p>16 the usual order of business?</p> <p>17 MR. FREDERICK: Objection, assumes facts</p> <p>18 not in evidence.</p> <p>19 A. I think that the default is under the rules.</p> <p>20 Q. (By Ms. Berkower) Is it implicit in those</p> <p>21 rules?</p> <p>22 A. No, I don't think it is implicit in the rules.</p> <p>23 Q. How is it not implicit in those rules?</p> <p>24 MR. FREDERICK: Objection, form.</p> <p>25 Objection, vague.</p>
<p style="text-align: center;">282</p> <p>1 about whether passing a bill without the two-thirds rule</p> <p>2 was somehow against or contrary to the rules, and you</p> <p>3 testified that, in fact, it was consistent with the</p> <p>4 rules. Is that -- do you remember that testimony?</p> <p>5 A. Yes.</p> <p>6 Q. Isn't it true, though, that the two-thirds rule</p> <p>7 is the default rule for bills in the Senate?</p> <p>8 MR. FREDERICK: Object, assumes facts not</p> <p>9 in evidence.</p> <p>10 You may answer.</p> <p>11 A. I don't know that I would characterize it as</p> <p>12 default. I think it chooses to impose, through its</p> <p>13 calendar mechanisms and its calendar systems, I think</p> <p>14 the Senate chooses to require a two-thirds vote on a lot</p> <p>15 of the legislation that it passes.</p> <p>16 Q. (By Ms. Berkower) The Senate makes its own</p> <p>17 rules each session, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And under the rules in 2009 and 2011, which you</p> <p>20 have testified are substantially similar, is that</p> <p>21 accurate?</p> <p>22 A. Yes.</p> <p>23 Q. So under those two sessions rules, isn't it</p> <p>24 true that most bills were subject to the two-thirds vote</p> <p>25 mechanism?</p>	<p style="text-align: center;">284</p> <p>1 Q. (By Ms. Berkower) You may answer.</p> <p>2 A. I think that the rules provide a calendar</p> <p>3 mechanism. As a general practice most legislative</p> <p>4 bodies have provisions for suspending the rules to take</p> <p>5 bills up out of order, the Texas Senate is no different,</p> <p>6 and that is what is contained in the Senate Rules, a</p> <p>7 regular calendar order, orders for the day, if you will,</p> <p>8 and a requirement within the rule that if that calendar</p> <p>9 is not followed then it requires a two-thirds vote to</p> <p>10 take a bill up out of the calendar order.</p> <p>11 Q. Would you agree that, to the extent that the</p> <p>12 2009 and 2011 rules carve out specific types of</p> <p>13 legislation for which a two-thirds vote is not required</p> <p>14 but a majority vote is required to take business out</p> <p>15 of -- to take up bills out of the normal order of</p> <p>16 business, that that would be different from the rules</p> <p>17 for other bills?</p> <p>18 MR. FREDERICK: Objection, assumes facts</p> <p>19 not in evidence.</p> <p>20 A. I think that the rules provide that bills</p> <p>21 relating to voter ID requirements may be made a special</p> <p>22 order with a majority vote of the members of the Senate</p> <p>23 Q. (By Ms. Berkower) And that rule puts voter ID</p> <p>24 legislation in a separate category from other bills; is</p> <p>25 that correct?</p>



285

1 A. For purposes of setting special orders, yes.  
 2 Q. So while it is within the confines of the rules  
 3 to pass -- or to set voter ID legislation as a special  
 4 order by a majority vote, it is different from the  
 5 practices that would be required to set other types of  
 6 legislation as a special order; is that correct?  
 7 A. I think the rule is clear that it takes a  
 8 majority vote to set bills relating to voter ID  
 9 requirements as a special order; and that bills that are  
 10 not voter ID can take a two-thirds vote to be set as  
 11 special orders.  
 12 Q. And the Legislature chose to make that -- the  
 13 Senate, sorry, chose to make that distinction when it  
 14 passed its rules, correct?  
 15 A. The Senate adopted its rules and wrote those  
 16 rules, yes.  
 17 Q. Okay.  
 18 MS. BERKOWER: I don't have any further  
 19 questions.  
 20 MR. FREDERICK: Nor I.  
 21 (Deposition concluded.)  
 22  
 23  
 24  
 25

287

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5 I, KARINA CASARI DAVIS, have read the  
 6 foregoing deposition and hereby affix my signature that  
 7 same is true and correct, except as noted above.  
 8 \_\_\_\_\_  
 9 KARINA CASARI DAVIS  
 10 STATE OF TEXAS )  
 11 COUNTY OF TRAVIS )  
 12 Before me, \_\_\_\_\_, on this  
 13 the day personally appeared KARINA CASARI DAVIS known to  
 14 me to be the person whose name is subscribed to the  
 15 foregoing instrument and acknowledge to me that they  
 16 executed the same for the purposes and consideration  
 17 therein expressed.  
 18 Given under my hand and seal of office  
 19 this \_\_\_\_ day of \_\_\_\_\_, 2012.  
 20 \_\_\_\_\_  
 21 NOTARY PUBLIC IN AND FOR  
 22 THE STATE OF \_\_\_\_\_  
 23 \_\_\_\_\_  
 24 \_\_\_\_\_  
 25 \_\_\_\_\_

286

1 CHANGES AND SIGNATURE  
 2 PAGE LINE CHANGE REASON  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
 13 \_\_\_\_\_  
 14 \_\_\_\_\_  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_  
 19 \_\_\_\_\_  
 20 \_\_\_\_\_  
 21 \_\_\_\_\_  
 22 \_\_\_\_\_  
 23 \_\_\_\_\_  
 24 \_\_\_\_\_  
 25 \_\_\_\_\_

288

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF COLUMBIA  
 3 STATE OF TEXAS §  
 4 Plaintiff, §  
 5 VS. §  
 6 ERIC H. HOLDER, JR., IN §  
 7 HIS OFFICIAL CAPACITY AS §  
 8 THE ATTORNEY GENERAL OF THE §  
 9 UNITED STATES, §  
 10 Defendant, §  
 11 ERIC KENNIE, ET AL., §  
 12 Defendant-Intervenors, §  
 13 THE TEXAS STATE CONFERENCE §  
 14 OF NAACP BRANCHES, et al., § CASE NO. 1:12-CV-00128  
 15 Defendant-Intervenors, § (RMC-DST-RLW)  
 16 § Three-Judge Court  
 17 TEXAS League OF YOUNG §  
 18 VOTERS EDUCATION FUND, §  
 19 et al., §  
 20 Defendant-Intervenors, §  
 21 TEXAS LEGISLATIVE BLACK §  
 22 CAUCUS, et al., §  
 23 Defendant-Intervenors, §  
 24 VICTORIA RODRIGUEZ, ET AL., §  
 25 Defendant-Intervenors. §  
 \*\*\*\*\*  
 1 REPORTER'S CERTIFICATION  
 2 DEPOSITION OF KARINA CASARI DAVIS  
 3 JUNE 15, 2012  
 4 \*\*\*\*\*  
 5 I, CAROLINE CHAPMAN, Certified Shorthand  
 6 Reporter in and for the State of Texas, hereby certify  
 7 to the following:  
 8 That the witness, KARINA CASARI DAVIS was  
 9 duly sworn by the officer and that the transcript of the  
 10 oral deposition is a true record of the testimony given

1	3
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA	INDEX
STATE OF TEXAS )	PAGE
)	Appearances..... 2
VS. ) NO. 12-CV-128	SENATOR WENDY DAVIS
) (DST, RMC, RLW)	Examination by Mr. Frederick ..... 4
ERIC H. HOLDER, JR., )	Signature and Changes ..... 82
ET AL )	Reporter's Certificate ..... 84
*****	
ORAL DEPOSITION OF SENATOR WENDY DAVIS	
*****	
ANSWERS AND DEPOSITION OF SENATOR WENDY DAVIS, a	
witness called by the United States taken before Janalyn	
Reeves, Certified Shorthand Reporter for the State of	
Texas, on the 6th day of June, 2012, between the hours	
of 1:30 p.m. and 3:48 p.m., at 48 East Avenue, Austin,	
Texas, pursuant to the agreement of counsel for the	
respective parties as hereinafter set forth.	
2	4
1 APPEARANCES	1 SENATOR WENDY DAVIS,
2	having being first duly sworn, testified as follows:
3 FOR THE PLAINTIFF, STATE OF TEXAS:	2 EXAMINATION
4 OFFICE OF THE ATTORNEY GENERAL	BY MR. FREDERICK:
5 By: MR. MATTHEW FREDERICK	3 Q. Good afternoon, Senator Davis. My name is Matt
6 209 West 14th Street	4 Frederick. I'm with the Texas Attorney General and I
7 Austin, Texas 78701	5 represent the State of Texas. Would you please state
8 PH: (512) 936-2779	6 your full name for the record?
9	7 A. Wendy Russell Davis.
10 FOR THE DEFENDANT:	8 Q. Senator Davis, have you been deposed before?
11 DEPARTMENT OF JUSTICE	9 A. Yes, I have.
12 By: MR. VICTOR WILLIAMSON	10 Q. How many times?
13 950 Pennsylvania Avenue, NW	11 A. Once.
14 Washington, DC 20530	12 Q. And do you remember the case that that was for?
15 PH: (800) 253-3931	13 A. Yes, it was in our redistricting litigation.
16 FOR THE INTEVENORS:	14 Q. Is there anything that will prevent you from
17 BRAZIL AND DUNN	15 accurately answering my questions today?
18 By: MR. CHAD DUNN	16 A. No.
19 4201 Cypress Creek Parkway	17 Q. Okay. Just in case you don't remember from your
20 Suite 530	18 redistricting experience, I'll go over some brief ground
21 Houston, Texas 77068	19 rules. One, answer audibly so the court reporter can
22 Ph: (281) 580-6310	20 get it on the record. So rather than nodding your head
23	21 say, "yes"?
24	22 A. Okay.
25	23 Q. If you don't understand a question I ask, please
	24 let me know and I'll be happy to rephrase. Okay?
	25 A. Okay.

<p style="text-align: center;">5</p> <p>1 Q. And again, so the court reporter can get</p> <p>2 everything on the record, please try and wait until I</p> <p>3 finish my question to start answering. I will also try</p> <p>4 and not answer -- not ask a question while you are</p> <p>5 answering.</p> <p>6 A. Okay.</p> <p>7 Q. Your lawyer may object to a question. Unless he</p> <p>8 instructs you not to answer, you may still answer the</p> <p>9 question.</p> <p>10 A. All right.</p> <p>11 Q. Are you represented by council today?</p> <p>12 A. I am.</p> <p>13 Q. And who is that?</p> <p>14 A. Chad Dunn is here with me today. I'm also</p> <p>15 represented by Jerry Hebert.</p> <p>16 Q. Okay. When did that representation begin?</p> <p>17 A. I don't recall.</p> <p>18 Q. What did you do to get ready for your deposition</p> <p>19 today?</p> <p>20 A. I reviewed, by e-mail, a few of the amendments</p> <p>21 that I had introduced during the voter ID debate on the</p> <p>22 Senate floor.</p> <p>23 Q. Anything else?</p> <p>24 A. That's it.</p> <p>25 Q. Okay. Did you meet with anybody to prepare for</p>	<p style="text-align: center;">7</p> <p>1 A. No.</p> <p>2 Q. Do you have a passport?</p> <p>3 A. Yes.</p> <p>4 Q. Are there other members of your household who are</p> <p>5 voting age?</p> <p>6 A. Yes.</p> <p>7 Q. Are the voting age individuals in your household</p> <p>8 registered to vote?</p> <p>9 A. Yes.</p> <p>10 Q. And do those individuals have a current Texas</p> <p>11 driver's license?</p> <p>12 A. Yes.</p> <p>13 Q. Can you describe, generally, your own involvement</p> <p>14 with Senate Bill 14?</p> <p>15 A. Yes. I participated in a dialogue and a debate</p> <p>16 about the bill on the Senate floor. I opposed the bill</p> <p>17 and introduced amendments that I thought could improve</p> <p>18 upon it.</p> <p>19 Q. Do you recall how many amendments you offered?</p> <p>20 A. I do not. Probably less than ten.</p> <p>21 Q. Were any of those amendments accepted?</p> <p>22 A. One was. But not as I had offered it. I offered</p> <p>23 an amendment that addressed the issue of persons who</p> <p>24 were indigent. To provide an opportunity for them to</p> <p>25 vote a provisional ballot by swearing to their indigency</p>
<p style="text-align: center;">6</p> <p>1 your deposition?</p> <p>2 A. No, I did not.</p> <p>3 Q. Did you talk to your lawyer?</p> <p>4 A. Yes.</p> <p>5 Q. How many times did you meet with your lawyer</p> <p>6 before your deposition?</p> <p>7 A. I didn't meet with him. We had one very brief</p> <p>8 phone conversation yesterday.</p> <p>9 Q. Did anyone else participate in that phone</p> <p>10 conversation?</p> <p>11 A. No.</p> <p>12 Q. Have you spoken to anyone else about your</p> <p>13 deposition today?</p> <p>14 A. No.</p> <p>15 Q. And other than the amendments that you mentioned</p> <p>16 did you review any other documents to prepare for your</p> <p>17 deposition?</p> <p>18 A. No.</p> <p>19 Q. Did you bring any documents with you today?</p> <p>20 A. I did not.</p> <p>21 Q. Are you currently registered to vote?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have a current Texas driver's license?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have a concealed handgun license?</p>	<p style="text-align: center;">8</p> <p>1 and allowing the election judge to accept their vote.</p> <p>2 That was modeled after what I had read in the Supreme</p> <p>3 Court opinion that upheld the Indiana voter ID law.</p> <p>4 The Court specifically noted that the indigency</p> <p>5 exception was included in that law. And from my reading</p> <p>6 of the Supreme Court opinion, they believed that it was</p> <p>7 constitutional based on the fact that that exception had</p> <p>8 been included within it. I argued that point on the</p> <p>9 Senate floor. The amendment was tabled.</p> <p>10 But Senator Duncan, I think, considering my</p> <p>11 arguments, at some point during the debate asked that an</p> <p>12 amendment be drawn up under his name that did,</p> <p>13 essentially, the same thing. He actually improved the</p> <p>14 way it was written, I thought. And he introduced the</p> <p>15 amendment then and asked that I be shown also as an</p> <p>16 author of that amendment since I had originally</p> <p>17 introduced it. And it was included in the Senate bill.</p> <p>18 But it's my understanding that it was stripped out in</p> <p>19 the conference committee.</p> <p>20 Q. And in your understanding, was it stripped in the</p> <p>21 Senate conference committee or by the House conference</p> <p>22 committee?</p> <p>23 A. I don't know.</p> <p>24 Q. Under that amendment did it provide -- and I'll</p> <p>25 ask about your original amendment for now. You said it</p>

<p style="text-align: center;">9</p> <p>1 allowed an indigent person to sign an affidavit of</p> <p>2 indigency; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And would that, assuming that the affidavit were</p> <p>5 accepted, would that allow the vote to be counted?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So it wasn't just a provisional ballot</p> <p>8 that would have to be cured at a later date?</p> <p>9 A. I believe that's true, though that is not one of</p> <p>10 the amendments that I went back and read. The one that</p> <p>11 actually was included that Senator Duncan introduced, so</p> <p>12 I don't recall. But I'm sure it's very easy to find.</p> <p>13 Q. Okay. And to the extent you can recall, did</p> <p>14 Senator Duncan's amendment that listed you as a</p> <p>15 co-author, did it also provide that an indigent person</p> <p>16 could swear -- could sign an affidavit and have his or</p> <p>17 her vote counted?</p> <p>18 A. Yes.</p> <p>19 Q. And so it would not have to be cured later by</p> <p>20 showing a photo ID?</p> <p>21 A. I think that's correct, yes.</p> <p>22 Q. Why -- why did you offer an amendment providing</p> <p>23 for an accommodation for indigent voters?</p> <p>24 A. One of the pieces of information that I</p> <p>25 introduced during the debate, I had a large display</p>	<p style="text-align: center;">11</p> <p>1 where their right to vote, which they currently exercise</p> <p>2 today, would be threatened.</p> <p>3 Q. So you were concerned that because of the</p> <p>4 potential costs that might be imposed as a result of an</p> <p>5 ID requirement, that a person might not be able to</p> <p>6 afford to get an ID; is that right?</p> <p>7 A. That's right.</p> <p>8 Q. Was it your understanding or belief that an</p> <p>9 exception allowing for indigent voters to sign an</p> <p>10 affidavit rather than present photo ID, was it your</p> <p>11 understanding that that amendment would have alleviated</p> <p>12 any negative effect of SB 14?</p> <p>13 A. It would have alleviated a significant negative</p> <p>14 effect. But there were other amendments that I offered</p> <p>15 as well that were unique, they each had unique concerns</p> <p>16 behind them that were also important, I felt.</p> <p>17 Q. I believe it was said on the Senate floor that</p> <p>18 there was a concern that SB 14, if enacted, would have</p> <p>19 some impact on African-American and Latino voters; is</p> <p>20 that right?</p> <p>21 A. Yes.</p> <p>22 Q. And is that your -- is that your belief about</p> <p>23 SB 14 as well?</p> <p>24 A. My belief about SB 14 is that it has a uniquely</p> <p>25 negative impact on persons who are currently voting</p>
<p style="text-align: center;">10</p> <p>1 board that I had had created for purposes of introducing</p> <p>2 that amendment. And on the display board I demonstrated</p> <p>3 the underlying documentation that is required in the</p> <p>4 State of Texas in order to be issued, either a driver's</p> <p>5 license or a State ID through the Department of Public</p> <p>6 Safety. And each of those underlying documents has a</p> <p>7 cost associated with them. For example, a birth</p> <p>8 certificate. I don't remember what some of the others</p> <p>9 were, a passport.</p> <p>10 And I demonstrated the circularity that occurs in</p> <p>11 order to get this document, you need to have these</p> <p>12 underlying documents. And in order to get a different</p> <p>13 document, you needed some of the same underlying</p> <p>14 documents. And for each ID or form of ID that was</p> <p>15 acceptable, subsumed within them were other forms of ID</p> <p>16 that also cost money.</p> <p>17 My concern was that, based on information that we</p> <p>18 received as part of the hearing and also in the hearing</p> <p>19 in the prior legislative session, a number of persons</p> <p>20 who do not have current State IDs and yet who are</p> <p>21 currently legally voting, do not have the underlying</p> <p>22 documentation in order to go and get those IDs. I was</p> <p>23 concerned that a person who didn't have the means to be</p> <p>24 able to get the underlying documents, even if the State</p> <p>25 ID were offered to them for free, would be in a position</p>	<p style="text-align: center;">12</p> <p>1 today, and who do not have the means to go out and get</p> <p>2 an adequate form of ID under the way that that law was</p> <p>3 passed. Information that was presented to us as part of</p> <p>4 that hearing and part of the legislative session</p> <p>5 indicated that that disproportionately impacted persons</p> <p>6 of color, Latino and African-American primarily.</p> <p>7 I also had concerns about persons who were voting</p> <p>8 today who would not have their vote accepted in the</p> <p>9 future. Not because they didn't have the means to</p> <p>10 receive an ID, but because there may be some unintended</p> <p>11 or unknown discrepancy on their voter ID card and their</p> <p>12 State ID.</p> <p>13 I specifically introduced an amendment for women</p> <p>14 who were recently married or divorced. I believed it</p> <p>15 was important. And it also was modeled after something</p> <p>16 that was part of the Indiana law and that was</p> <p>17 specifically spoken to in the Supreme Court's opinion.</p> <p>18 The Lieutenant Governor indicated to me privately that</p> <p>19 he believed that was a good exception, a good amendment</p> <p>20 and that he would push that that be approved through</p> <p>21 Congress, although I don't believe that occurred. It</p> <p>22 wasn't added.</p> <p>23 I also had a fairly broad amendment for</p> <p>24 discrepancies where your name may not exactly match</p> <p>25 what's on your voter ID card. My own driver's license,</p>

13

1 for example, and my voter ID card do not have an exact  
2 match. My own driver's license says Wendy Russell Davis  
3 on it. My voter ID card, when I received it a few weeks  
4 ago, said Wendy Davis.

5 And I had another broad amendment for a situation  
6 where a person's address may not match exactly on their  
7 voter ID card as it is on their driver's license. And a  
8 situation where a person may have moved subsequent to  
9 getting either of those two forms of voter documentation  
10 and they won't be the same because one had been changed  
11 while the other one had not yet been changed.

12 It's a broader concern for me that there are a  
13 number of people in the State of Texas who will show up  
14 to vote, if this law goes into effect, who will not have  
15 the opportunity to vote because our amendments that  
16 would have allowed, in most of those situations at  
17 least, for a provisional ballot to be provided to that  
18 voter are not going to be provided.

19 Q. Is it your understanding, then, that as enacted,  
20 the law would not permit a person who appears to vote  
21 without a qualifying photo ID to cast a provisional  
22 ballot?

23 A. Can you repeat your question?

24 Q. Of course. In your understanding of SB 14 as  
25 enacted, would a person who shows up to vote at the

14

1 polls without one of the forms of ID required, would  
2 that person still be able to cast a provisional ballot?  
3 A. Well, this is a good question. And it was part  
4 of a question in the debate about the bill. While the  
5 bill may address that, I had a great concern about what  
6 the training for our elections officials would be. And  
7 we spent a significant amount of time talking about  
8 whether there were any resources being committed by the  
9 State to train our election administrators, thousands  
10 and thousands of them across the State, on exactly how  
11 the deal with issues like that. If you have a voter who  
12 comes in and their ID does not exactly match, what  
13 should be done in that situation.

14 And I know from experience at my own polling  
15 location a few months ago, when the elections  
16 administrator who was working the poll the day that I  
17 voted looked at my voter ID card and my license, she  
18 said to me, "This won't be acceptable in November.  
19 You're going to have to clear this discrepancy." So  
20 that was her understanding. And that's a very important  
21 concern, I think.

22 But regardless of what the law specifically says,  
23 there is going to be, I think, a tremendous lack of  
24 understanding in those who are asked to administer it  
25 because the State didn't commit any resources for that

15

1 training.

2 Q. The election worker that you just mentioned at  
3 your polling place, to your knowledge, had that person  
4 received any education or training on how SB 14 would  
5 work?

6 A. I don't know. I know we didn't commit any  
7 resources to that kind of training at the State level.

8 Q. To your knowledge, has any -- have any training  
9 materials on SB 14 been delivered to anyone in the  
10 State?

11 A. I don't know.

12 Q. Did you -- did you write any articles or op-eds  
13 about SB 14?

14 A. Not that I recall.

15 Q. Did you give any speeches outside the legislature  
16 about SB 14?

17 A. Not that I recall.

18 Q. Do you recall any public statements that you made  
19 about SB 14?

20 A. Probably as I spoke to people in wrap up about  
21 what happened in this past legislative sessions. It was  
22 one of the items that I mentioned, but I have never  
23 given a presentation specific to that bill.

24 Q. When you say "wrap up," what do you mean by that?

25 A. I'm asked, as I'm sure all legislators are, to

16

1 speak to different organizations in my district about  
2 what happened in the most recent legislative sessions.

3 Q. So this is kind of a summary of what's happened  
4 in this session that you provide in your district?

5 A. Yes. Yes.

6 Q. Did you talk -- did you talk to any lobbyist  
7 about SB 14, either before or during the 2011 session?

8 A. Not that I recall.

9 Q. Did you speak to any advocacy group about SB 14,  
10 either before or during the 2011 session?

11 A. Not independent of hearing testimony on the  
12 Senate floor.

13 Q. Did you for the -- well, for either -- I guess it  
14 would have been in the committee. But did you have any  
15 witnesses appear to give testimony on SB 14?

16 A. I, specifically, did not request any witnesses to  
17 appear, no.

18 Q. Did any of your constituents appear to testify  
19 about SB 14?

20 A. I don't recall if anyone from SD 10 was there.

21 Q. Do you recall if anyone from your district  
22 testified about the previous voter ID bill from 2009?

23 A. I don't recall.

24 Q. Do you recall whether you spoke to any lobbyist  
25 or advocacy group about the previous 2009 voter ID bill?

<p style="text-align: center;">17</p> <p>1 A. I don't recall.</p> <p>2 Q. Have you spoken -- you mentioned the wrap ups.</p> <p>3 Have you spoken to any of your constituents about SB 14?</p> <p>4 A. I can recall having just general conversations</p> <p>5 with people who have asked questions and expressed</p> <p>6 concerns about it. But I can't point to anything in</p> <p>7 particular.</p> <p>8 Q. Do you recall having any conversations about</p> <p>9 SB 14 with constituents, either during the legislative</p> <p>10 session or -- or before?</p> <p>11 A. I don't recall. I'm sure that we received</p> <p>12 e-mails on this issue, both in favor and against it.</p> <p>13 Q. Do you recall, I know that it's a long time ago</p> <p>14 now, but do you recall roughly what the proportion was</p> <p>15 of support and opposition?</p> <p>16 A. I don't. I don't.</p> <p>17 Q. To the best of your knowledge, do any of your</p> <p>18 constituents support photo ID requirements for voting,</p> <p>19 generally?</p> <p>20 A. I believe that many of my constituents do.</p> <p>21 Q. And to the best of your knowledge, do any of your</p> <p>22 constituents oppose a photo ID requirement for voting?</p> <p>23 A. I believe that many of them oppose it as well.</p> <p>24 Q. And in your understanding, do any of your</p> <p>25 constituents support SB 14?</p>	<p style="text-align: center;">19</p> <p>1 Q. Did anyone outside of the legislature provide you</p> <p>2 with any kind of background materials on photo ID</p> <p>3 legislation?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Do you know whether anybody outside the</p> <p>6 legislature provided your staff with materials on photo</p> <p>7 ID legislation?</p> <p>8 A. I don't know.</p> <p>9 Q. And I can hear myself kind of going back and</p> <p>10 forth. When I say "photo ID legislation" or "voter ID</p> <p>11 legislation," what I intend to refer to is legislation</p> <p>12 that would require a photo ID to vote.</p> <p>13 A. Yes, I understand your question that way.</p> <p>14 Q. Can you recall anyone providing you with -- with</p> <p>15 materials about SB 14 or voter ID legislation?</p> <p>16 A. I don't recall. We have a Democratic caucus, a</p> <p>17 Senate caucus and we have a caucus staff person who</p> <p>18 sometimes sends e-mails to us prior to working on</p> <p>19 particularly controversial issues. I don't recall him</p> <p>20 having sent anything to us for that, but he may have.</p> <p>21 Q. Do you recall whether the Senate Democratic</p> <p>22 caucus provided any -- well, I'll start with talking</p> <p>23 points, any talking points for members for committee or</p> <p>24 floor debate?</p> <p>25 A. Not that I recall. I know for my own preparation</p>
<p style="text-align: center;">18</p> <p>1 A. I don't know that any of my constituents</p> <p>2 understand the particulars of SB 14.</p> <p>3 Q. Do you know whether any of your constituents</p> <p>4 oppose SB 14?</p> <p>5 A. Same answer. I'm not sure any of them understand</p> <p>6 the specifics.</p> <p>7 Q. Did you prepare any talking points related to</p> <p>8 SB 14?</p> <p>9 A. For my introduction of amendments on the Senate</p> <p>10 floor or to the public at large?</p> <p>11 Q. Let's start within the legislature. Did you</p> <p>12 prepare any talking points or -- for any consideration</p> <p>13 of SB 14 or an amendment?</p> <p>14 A. My staff may have helped to prepare talking</p> <p>15 points, which is typical when I'm introducing amendments</p> <p>16 to bills. I don't recall personally preparing any</p> <p>17 talking points. I'm sure I made little notes to myself</p> <p>18 ahead of time.</p> <p>19 Q. Did anyone outside of the legislature prepare</p> <p>20 talking points for you on SB 14?</p> <p>21 A. No.</p> <p>22 Q. Did anyone outside the legislature, at any time,</p> <p>23 provide you with talking points about voter -- photo</p> <p>24 voter ID legislation?</p> <p>25 A. No.</p>	<p style="text-align: center;">20</p> <p>1 I concentrated very specifically on the Indiana law that</p> <p>2 had been upheld and the reasons that the Supreme Court</p> <p>3 gave for upholding it. I'm an attorney myself, so I</p> <p>4 read that with my own lawyer hat on, I guess, for lack</p> <p>5 of a better way of saying it. So that I would</p> <p>6 understand the nuances of what they found to be</p> <p>7 supportable in the law, and also expressed concerns that</p> <p>8 they may have made. And having read that really formed,</p> <p>9 for me, the background of the amendments that I</p> <p>10 introduced and the arguments that I made in introducing</p> <p>11 them.</p> <p>12 Q. And that's the Crawford versus Marion County</p> <p>13 case?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Did the Senate Democratic caucus provide</p> <p>16 any -- any material that you can recall specific to</p> <p>17 SB 14?</p> <p>18 A. I do not recall. It's possible, but I don't</p> <p>19 recall anything specific.</p> <p>20 Q. Do you recall whether the Senate Democratic</p> <p>21 caucus provided its members with any material specific</p> <p>22 to SB 362, the 2009 voter ID bill?</p> <p>23 A. I can't recall. I do believe that we were</p> <p>24 provided with a copy -- I don't remember if this came</p> <p>25 from my staff or if it came from our caucus staffer, but</p>



21

1 I recall reading the Baker-Carter report on photo voter  
2 ID and their recommendations. And reading that, both  
3 prior to the 81st legislative session debate on the bill  
4 and the 82nd legislative debate on the bill, and I  
5 specifically asked the bill's author questions from that  
6 report as to why some of the recommendations were  
7 advanced in the bill while others were not.

8 Q. Did you, your staff, conduct any studies about  
9 the potential impact of SB 14?

10 A. No. Not personally, no.

11 Q. Did you or your staff review any studies about  
12 the potential impact of SB 14?

13 A. Information was introduced in each of the two  
14 sessions where the bill was debated as part of our  
15 hearing. I don't recall whether anything independent of  
16 that was provided to me.

17 Q. And when you say that "information was provided,"  
18 is that information that was either discussed or  
19 introduced into the official record?

20 A. Yes, both oral testimony and I believe some  
21 written testimony as well.

22 Q. How does that typically work in the Senate? Is  
23 there kind of an organized distribution of materials to  
24 senators before a debate?

25 A. No. There's -- especially in the context of this

22

1 situation, in both the 81st and the 82nd legislative  
2 session, this bill was advanced using a procedural  
3 maneuver that assured that it would be debated outside  
4 the typical Senate rules. Typically a bill is sent to a  
5 specific committee and debated prior to being sent to  
6 the floor for a vote. And also, typically a bill  
7 requires two-thirds of the members to advance the bill  
8 to the floor for debate. In both of the two sessions  
9 where this bill was debated, those rules were set aside  
10 for procedural maneuver that allowed that. And so in  
11 each of them, the committee hearing that took place on  
12 the bill was simultaneous, really, with the Senate floor  
13 debate.

14 We functioned as Committee of the Whole. And we  
15 took testimony actually on the Senate floor which is  
16 very unusual. So it was all simultaneously done as part  
17 of our debate on the bill. And it was also the case  
18 that the bill was advanced without the requirement of  
19 the two-thirds vote in the Senate.

20 Q. And the two-thirds requirement, was that -- was  
21 there a -- there was a specific rule, a Senate rule  
22 adopted that created a particular rule for voter ID  
23 bills; is that right?

24 A. My recollection was that the bill was advanced in  
25 both sessions prior to the adoption of the Senate rules.

23

1 The Senate rules are adopted usually the first day that  
2 we actually convene to do business as a body. And by  
3 advancing this bill prior to the adoption of those  
4 rules, it was allowed to come forward without a  
5 two-thirds requirement.

6 I know that's what happened in the 81st session.  
7 I think that's what happened in the 82nd session, though  
8 I may be -- I may be remembering that incorrectly. It  
9 may have occurred through a different kind of procedural  
10 mechanism. But it certainly was something outside of  
11 our regular rules.

12 Q. And when you say it "was advanced prior to  
13 adoption of the Senate rules," do you mean it was  
14 introduced or filed prior to the adoption of the rules?

15 A. This bill -- in the 82nd session the governor  
16 advanced it as a piece of emergency legislation, and  
17 because of that, it came outside the regular process and  
18 procedures. And it was advanced at the very, very  
19 outset of the session so that it could move to the floor  
20 prior to the adoption of the rules. I believe that's  
21 correct.

22 Q. How does -- how does the governor's designation  
23 of a bill as emergency legislation, how does that affect  
24 the procedures that apply to that bill in the Senate?

25 A. It moved it up in the priority order of bills to

24

1 be considered. In the Senate, what typically happens is  
2 a blocker bill is filed at the outset of the legislative  
3 session. It's a bill that the Republican and Democratic  
4 senators agree will not ever be advanced. So what the  
5 two-thirds rule allows is for a bill to move outside the  
6 regular order of business and go in front of that  
7 blocker bill that's not been advanced. Where a piece of  
8 emergency legislation is filed, it can advance outside  
9 of that path.

10 Q. Okay. Is it, in your understanding, is it  
11 sufficient for -- is the governor's emergency  
12 designation, is that sufficient to take a bill, for lack  
13 of a better word, outside of the two-thirds blocker bill  
14 procedure?

15 A. No. No. In this instance, if I'm remembering  
16 this right, I believe that his emergency designation on  
17 the voter ID bill occurred and the bill moved forward  
18 prior to our adoption of the rules and the filing of the  
19 blocker bill. So there was no blocker bill in front of  
20 it or the rules that required two-thirds support to move  
21 a bill outside the order had not yet been adopted. But  
22 it was the only of the governor's pieces of emergency  
23 legislation that advanced in that way. The others came  
24 in through the two-thirds rule.

25 Q. Okay. What is the -- well, let's back up a bit.

25

1 When we talk about the two-thirds rule, am I correct in  
 2 understanding that -- so you said there's a blocker bill  
 3 that's kind of put at the front of the line. Is that  
 4 accurate?  
 5 A. Yes.  
 6 Q. And the two-thirds vote is necessary to -- does  
 7 it suspend the regular order of business?  
 8 A. Yes, that's exactly what it does.  
 9 Q. And so by suspending the regular order of  
 10 business, that two-thirds vote allows for a bill to be  
 11 considered out of order. Is that -- is that a fair --  
 12 A. Yes. Yes.  
 13 Q. So in some sense, the -- what's thought of as the  
 14 normal Senate procedure is to suspend the regular order  
 15 of business?  
 16 A. Yes.  
 17 Q. Are there other -- are there any other ways in  
 18 the Senate that a bill can not have to go through the  
 19 two-thirds vote?  
 20 A. There was another procedural maneuver used this  
 21 session that I'm not sure had been used before. And my  
 22 memory is fairly vague on it. But it was on what we  
 23 call House bill day. It's when a group of House bills  
 24 come over and we didn't have a blocker bill in the order  
 25 of business on the House bills. So a bill came through

26

1 without having to come outside the regular order of  
 2 business. And therefore, the parliamentarian rules that  
 3 that House Bill could be considered even though it  
 4 didn't have a two-thirds vote to bring it to the floor.  
 5 And it was another controversial bill. I believe  
 6 it was the sanctuary city bill. It may have been the  
 7 sonogram bill, but it was one of those.  
 8 Q. So on a House -- on House bill day, is it  
 9 customary to have a blocker bill or not?  
 10 A. Yes. Well, let me -- let me say that  
 11 differently. I'm not sure that anyone had ever really  
 12 addressed that question before. And it took a great  
 13 deal of debate in front of the parliamentarian before  
 14 she ruled on what should happen.  
 15 I think it had always been assumed that the  
 16 Senate blocker bill served as a blocker bill regardless  
 17 of whether a bill was coming over on House bill day or  
 18 whether it was coming in the regular order of business  
 19 through the Senate. And this was the first time that  
 20 the question had been pressed. And honestly, it caught  
 21 the Democratic minority party off-guard. And we  
 22 believed that it shouldn't advance, but the  
 23 parliamentarian ruled that it should. So when I  
 24 answered your question "yes," I think that going  
 25 forward, that's what she would rule. That on House bill

27

1 day, unless you've got a blocker House bill there, as  
 2 long as it's the next one coming up in line, you can go  
 3 ahead and consider it.  
 4 Q. And so are you aware in the 81st Legislature or  
 5 any previous legislature, are you aware of a blocker  
 6 bill being filed in the Senate on House bill day?  
 7 A. I'm not aware that that question had ever arisen  
 8 or that anyone considered that there needed to be a  
 9 separate House blocker.  
 10 Q. So to the best of your knowledge, there had not  
 11 been a specific blocker bill filed in the Senate on  
 12 House bill day?  
 13 A. It would be a House bill blocker. And to my  
 14 knowledge, that had never been considered or debated.  
 15 It was always assumed that the Senate blocker bill  
 16 served as a blocker for all legislation whether it  
 17 originated in the House or the Senate.  
 18 Q. Is the blocker bill, is that something that is  
 19 typically provided in the Senate rules themselves?  
 20 A. Yes. Just under the regular order of business,  
 21 that's how it's discussed. It's not called a blocker  
 22 bill. But there's a rule about the fact that bills must  
 23 be taken up in order that they come, essentially. And  
 24 that in order to bring a bill up to the floor outside of  
 25 the order, there needed to be a two-thirds vote of the

28

1 membership to allow that to happen.  
 2 Q. I see. So there's no -- if I understand  
 3 correctly, there's not a rule that says a blocker bill  
 4 or a --  
 5 A. Correct.  
 6 Q. Any bill shall be filed and not acted upon?  
 7 A. Correct.  
 8 Q. But the regular order of business says you take  
 9 bills in order, right?  
 10 A. Yes.  
 11 Q. And it's customary to file a bill that's known as  
 12 a blocker bill that sits at the front of the line?  
 13 A. It has always been the tradition of the Senate to  
 14 do that, yes. I'm not aware of any session that's ever  
 15 been conducted without that practice.  
 16 Q. Are you -- are you aware of any -- any other  
 17 bills that have been considered, I guess the word would  
 18 be in the regular order of business? And by that I mean  
 19 without the two-thirds procedure?  
 20 A. As I said, I believe either the sanctuary city  
 21 bill -- I believe it was the sanctuary city bill, I  
 22 think essentially there was a two-thirds vote sufficient  
 23 to bring the sonogram bill forward to the floor. There  
 24 was another controversial bill this session that came  
 25 out of the order of business. Again, it was the House

29

1 bill day one, but I don't recall what it was.  
 2 Q. In the regular order of business in the Senate,  
 3 how many votes are necessary to pass a bill?  
 4 A. There are 31 members of the Senate. It requires  
 5 21 of us to vote to bring a bill to the floor for  
 6 debate. And after it's brought to the floor on second  
 7 reading, it only requires a simple majority in order to  
 8 pass a two-third reading and then to pass it on to the  
 9 House.  
 10 Q. And you say there are 21 votes required to bring  
 11 it to the floor. Is that -- is that the regular order  
 12 of business or is that the -- or is that to suspend the  
 13 regular vote?  
 14 A. That's to suspend, because every time we bring a  
 15 bill we're suspending the regular order because of that  
 16 blocker bill.  
 17 Q. Okay. But if there were not a blocker bill in  
 18 place for whatever reason?  
 19 A. Then the next bill that was in line would be the  
 20 one that could come up outside of a two-thirds vote.  
 21 But as long as it wasn't the one in the front, every  
 22 other bill behind it would have to come up under a  
 23 two-thirds vote. It would just depend on what the  
 24 natural order of the bills was as they were advanced  
 25 through committee and sent to the Senate floor.

30

1 Q. So if there were no blocker bill for whatever  
 2 reason, then to bring a bill to the floor, how many  
 3 votes would that require?  
 4 A. If there were no blocker bill and it was the  
 5 first one in line, it would only require a simple  
 6 majority.  
 7 Q. Do you recall seeing any studies about -- about  
 8 the impact of a photo ID law on voter turnout?  
 9 A. I recall there being testimony about that. And  
 10 there was likely written testimony introduced, but I  
 11 don't recall specifically what it said.  
 12 Q. Do you recall generally whether there was  
 13 testimony or evidence of studies showing that photo ID  
 14 laws would increase turnout?  
 15 A. No.  
 16 Q. Do you recall seeing or hearing about any studies  
 17 that showed a decrease in turnout caused by photo ID  
 18 laws?  
 19 A. I generally recall from the Carter-Baker report  
 20 that the express concern that that would be the  
 21 consequence of a voter ID law without adequate  
 22 compensating procedures to prevent that. Very  
 23 specifically they talked about same day voter  
 24 registration, they talked about mobile voter  
 25 registration drives, and they talked about a fairly

31

1 delayed time period between adoption of such a rule and  
 2 implementation with a very well funded education system  
 3 that would be part of moving to a photo ID -- a photo ID  
 4 requirement.  
 5 Q. Okay. I'm sure I could read it in the report.  
 6 But do you recall what the -- what the recommended  
 7 advance period was in the Carter-Baker report?  
 8 A. I'm sorry. I don't. I know that amendments were  
 9 introduced in both sessions on those counter balances,  
 10 recommendations that were in the Carter-Baker report to  
 11 enhance and improve the opportunity for people to vote  
 12 in spite of a photo ID requirement, but none of those  
 13 was accepted as part of the bill.  
 14 Q. Now, in the ordinary course of business in the  
 15 Senate, a bill is referred to you -- you said a specific  
 16 committee?  
 17 A. Correct.  
 18 Q. And -- but SB 14 was referred to the Committee of  
 19 the Whole, right?  
 20 A. Correct.  
 21 Q. Is there a particular committee that SB 14 would  
 22 have been referred to had it not been referred to the  
 23 Committee of the Whole?  
 24 A. I believe the committee -- I don't sit on it so I  
 25 may get the name of it wrong. I believe it's called

32

1 Intergovernmental Relations. I believe that's right.  
 2 And that's probably where it would have gone. It could  
 3 have also gone through State Affairs. I think either of  
 4 those would have been a logical place.  
 5 Q. How many people typically are on a Senate  
 6 committee?  
 7 A. Depends on the committee. Some are as large as  
 8 15. Others have, I think usually nine members. And  
 9 some only have five. It's always an odd number.  
 10 Q. Uh-huh. Do you know, as you sit here, how many  
 11 members the State Affairs Committee has?  
 12 A. I believe State Affairs has nine members on it.  
 13 Q. Okay. Is the introduction of testimony and  
 14 evidence, is that limited in the Senate to the  
 15 committee?  
 16 A. Yes. As part of a Senate debate, we can  
 17 introduce information that we seek to be added as an  
 18 amendment to a bill. And occasionally, but rarely, a  
 19 piece of information may be introduced to the secretary  
 20 of the Senate and a request made of her to pass it out  
 21 to the members for them to review prior to voting on a  
 22 bill. It's fairly rare that that happens, but sometimes  
 23 it does.  
 24 Q. If that -- when that does happen, does the  
 25 material that gets submitted to the secretary, does that

33

1 become part of the record?

2 A. If it's requested that that be done, it isn't  
3 always the case. But a member can move that a piece of  
4 information that they've handed out to the other members  
5 be included in the formal record and then the members  
6 vote on whether they agree that that should occur.

7 Q. In just a typical committee, who is allowed to  
8 introduce evidence or provide witnesses on a committee?

9 A. Any person who wishes to submit testimony to a  
10 committee may do so. The chair makes a decision on  
11 whether that information can be submitted verbally or  
12 whether in writing. Sometimes a chair chooses only to  
13 allow invited testimony. And that invitation occurs at  
14 the behest of the chair working with their staff. And  
15 then that testimony is the verbal testimony and all  
16 other testimony that's introduced is done so in writing,  
17 typically. But cards are provided as part of committee  
18 hearings for people to fill out, simply to express  
19 whether they were in favor or against a bill. And they  
20 can put their name and their address and their  
21 identifying information to create part of the formal  
22 record.

23 Q. Are members who don't sit on a committee allowed  
24 to introduce evidence into the record?

25 A. No.

34

1 Q. When the Senate sits on the Committee of the  
2 Whole, are all members allowed to introduce evidence  
3 into the record?

4 A. Yes. And to -- just to supplement my answer to  
5 your question a moment ago. It's our tradition and our  
6 courtesy to each other as a body, if we wish to  
7 introduce testimony in a committee or evidence or  
8 information in a committee, as a courtesy, a Senator not  
9 sitting on the committee can request that that be done  
10 through a member and the member -- I can't imagine a  
11 situation where they don't agree to do that.

12 Q. So occasionally it is possible for someone who's  
13 not on the committee to, with the assistance of a  
14 committee member, introduce evidence into the record?

15 A. Yes. Yes.

16 Q. In an ordinary -- would it be accurate to refer  
17 to what I'm calling an ordinary committee as a standing  
18 committee?

19 A. Uh-huh. Yes.

20 Q. In a standing committee, is it typical -- how  
21 many Senators typically attend the proceedings of an  
22 ordinary COMMITTEE?

23 A. Sometimes all of the members on a committee are  
24 present. Sometimes not. In order for a vote to be  
25 taken, a quorum of the committee must be present. In

35

1 fact, in order for a bill to be formally introduced to a  
2 committee, a quorum must be present in order to move its  
3 adoption before the committee.

4 Q. How often do Senators who are not members of the  
5 committee attend committee meetings?

6 A. Fairly often because we introduce our own bills  
7 to committees that we do not sit on. While we do not  
8 come and testify on behalf of other Senators bills or  
9 provide evidence on bills that are not our own, we do  
10 introduce our own bills before committee members if our  
11 bill is being assigned to that committee. So it's  
12 fairly frequent that we appear at each other's committee  
13 hearings. We're usually given courtesy of sitting up at  
14 the dais and we introduce our bill to the committee from  
15 that position.

16 Q. Is it typical for members not on the committee to  
17 stay and listen to testimony on bills that they have not  
18 introduced to the committee?

19 A. Sometimes. Any member is certainly provided the  
20 courtesy of doing that. And oftentimes if a bill is  
21 particularly controversial or noteworthy, members  
22 outside the committee will come and listen and actually  
23 participate in asking questions of the witnesses at the  
24 discretion of the chair.

25 Q. Okay. When the Senate sits as a Committee of the

36

1 Whole, does the chair have any discretion as to whether  
2 a member of the Senate may question a witness?

3 A. The chair in that situation is the Lieutenant  
4 Governor. I suppose he has that discretion. I don't  
5 recall any limitation of questions being a part of our  
6 debate on SB 14. Although there may have been time  
7 constraints in terms of how long witnesses could  
8 testify. In fact, I'm fairly sure that there were.

9 Q. Is it accurate to say that in the Committee of  
10 the Whole any Senator has the right to introduce  
11 evidence into the record?

12 A. Yes.

13 Q. Is it accurate to say that in the Committee of  
14 the Whole any Senator has the right to question a  
15 witness?

16 A. Yes.

17 Q. And I think you just said that in this -- in a  
18 Committee of the Whole, the chair would be the  
19 Lieutenant Governor?

20 A. Correct.

21 Q. Do you believe that SB 14 will have the effect of  
22 denying or abridging African-American Texans right to  
23 vote?

24 A. Yes, I do.

25 Q. What's the basis for that belief?

37

1 A. I believe that the bill will particularly have an  
2 impact on abridging the right to vote of persons who are  
3 of low income status, indigent status primarily. There  
4 was information, as I said earlier, that was introduced  
5 into the record that that particular class of people in  
6 the State of Texas disproportionately is made up of  
7 persons who are African-American and Latino. And that  
8 therefore, if one could conclude that persons who are of  
9 indigent status will no longer be able to meet the  
10 requirements to vote in the State of Texas or to occur,  
11 one could also conclude that that would have a  
12 disproportionate impact on the African-American and  
13 Latino community.

14 Q. Is there any other reason that you believe SB 14  
15 will have a negative impact on the African-American  
16 community in Texas?

17 A. I believe that that concern that I expressed  
18 captures.

19 Q. Do you believe that SB 14 will have the effect of  
20 denying or abridging the right to vote of  
21 African-American Texans who are not indigent?

22 A. I believe it will disproportionately impact those  
23 who don't ordinarily seek out a driver's license in the  
24 State of Texas. That person may not fall in an indigent  
25 category, but my concern is that, particularly where no

38

1 funding was provided to create an -- a very broad based  
2 education in the State about the photo ID requirement,  
3 that many people will be caught off-guard by it. That  
4 those who use the bus for transportation, those who have  
5 not had a driver's license for other purposes, will come  
6 to vote and will not have the opportunity to do so. Not  
7 because, necessarily, at the end of the day all of them  
8 fit into a category of a person who can't afford,  
9 ultimately, to get an ID, but because no education  
10 component was put in place to make sure that people are  
11 aware.

12 Q. Was there any evidence considered or presented in  
13 the 81st or the 82nd Legislature that showed or that  
14 attempted to show who -- how many non-indigent people  
15 would maybe lack an ID?

16 A. I believe the question was asked of the Secretary  
17 of State, or a representative of the Secretary of  
18 State's office, how many people were presumed to be  
19 impacted by such as law. I also recall that there  
20 really was no specific information provided to us about  
21 what that impact would look like. And it was one of our  
22 gravest concerns that we were moving forward on a bill  
23 where no real analysis had been conducted with regard to  
24 the disenfranchisement of persons who are currently  
25 legally voting.

39

1 Q. When you say -- when you say that "people who  
2 would be impacted," do you mean people who might not  
3 have the required ID?

4 A. Yes. We, you know, as part of our debate in both  
5 sessions, members who are opposed to the bill raised the  
6 concern that there would be a disproportionately  
7 negative impact on persons in the African-American and  
8 Latino community of current legal voting citizens. And  
9 we asked specifically that information be provided to us  
10 that assured us that that negative impact would not  
11 occur. And it was fairly apparent to me certainly, and  
12 I believe to others, that there was flagrant disregard  
13 for whether it had that kind of impact. And many of us  
14 believed that that impact was the absolute intent of  
15 that piece of legislation.

16 Q. We may have already gone over this a little bit.  
17 But you say many of us believed that -- I don't mean to  
18 misquote you, but many of us believed that there was a  
19 negative impact on African-Americans, Latinos. What  
20 was -- I've asked you about the basis for your belief  
21 about an impact. Do you have a sense of what the  
22 general basis of that belief was, that there would be a  
23 negative impact on African-Americans and Latinos?

24 A. Well, certainly information that was provided as  
25 part of both the 81st and the 82nd legislation in our

40

1 discussions. Testimony that was provided, as well as  
2 information in the Baker-Carter report which  
3 specifically refers to the possible impact on members of  
4 those communities, those populations. But the other  
5 that was noted in both session's debate on the bill was  
6 that there had not been any information put in front of  
7 us as a Senate body, as a Legislature, that demonstrated  
8 the existence of fraud sufficient to move forward with a  
9 bill, a law, that would have the likely consequence of  
10 disenfranchising voters who currently have the legal  
11 right to vote. And we specifically asked why this piece  
12 of legislation were advancing absent that information,  
13 where information that exists with regard to fraud and  
14 absentee balloting was not being addressed.

15 Comparatively, the information before the State  
16 in terms of where fraud occurs in the voting process  
17 demonstrates that there's much more likelihood of fraud  
18 occurring in the absentee voter arena than in the photo  
19 ID fraud arena or voter fraud arena. It's my belief,  
20 it's other's belief, that the attempt to address the  
21 absentee voter fraud would have an impact that was much  
22 broader than simply on the African-American and Latino  
23 community. And that that's why that piece of voter  
24 fraud is not being addressed in the State of Texas.

25 A great deal of Anglo, particularly senior vote,

41

1 occurred in the absentee vote arena. And that the  
2 likelihood that those persons might be impacted by any  
3 kind of a law that would address that fraud was what  
4 keeps it from being an issue of concern that's advanced  
5 by the majority party in the State of Texas, while a  
6 piece of legislation to address an undemonstrated fraud  
7 is advancing simply because of the people that it will  
8 most assuredly impact.

9 Q. Is it your belief that there is no in person  
10 voter fraud in Texas?

11 A. I cannot say that with certainty. What I can say  
12 is that we, as a State, spent an enormous amount of  
13 money trying to ferret out such fraud in both of the  
14 legislative sessions debate on this bill. Specific  
15 questions were addressed to the attorney general's  
16 office with regard to the consequences of those  
17 investigations and the multiple millions of dollars that  
18 were spent in trying to ferret it out. And my  
19 recollection from that testimony was that very, very  
20 little fraud had been revealed.

21 Q. Is that testimony and the effort that you're  
22 describing, is that the effort by the Texas Attorney  
23 General's office?

24 A. Yes.

25 Q. Is it -- is it your understanding that the

42

1 attorney -- the Texas Attorney General has the exclusive  
2 ability or jurisdiction to prosecute voter fraud?

3 A. I don't know. I do know that as part of each of  
4 these legislative sessions, we advanced an enhanced  
5 penalty piece of legislation for persons who were caught  
6 committing fraud at the ballot box. And it was our  
7 belief that, to the extent fraud exists, that would be  
8 an appropriate way to address that fraud where it was  
9 discovered. Particularly because on ballots with the  
10 very, very minimal justification for a photo voter ID  
11 law, many, many, many people in the State of Texas who  
12 currently have the legal right to vote will have this  
13 right threatened. And that a much greater threat to the  
14 disenfranchisement to the legal voters is the  
15 consequence of moving forward with that as the solution,  
16 with a photo ID bill as the solution.

17 Q. So, then it was your belief that increasing the  
18 penalty for in person voter fraud was a sufficient  
19 remedy or deterrent?

20 A. Yes. Particularly because so little had ever  
21 been discovered.

22 Q. And in your understanding, was that the belief of  
23 the Democratic members of the Senate as well?

24 A. Yes. And I believe we collectively voted in  
25 favor of an amendment that would have addressed voter

43

1 fraud in that manner.

2 Q. But there -- are you familiar with testimony or  
3 argument of proponents of the bill that in person voter  
4 fraud is more difficult to detect?

5 A. I'm not aware.

6 Q. Do you have any understanding or a personal  
7 knowledge whether or not in person voter fraud is more  
8 difficult to detect than, say, mail in ballot fraud?

9 A. I'm not aware.

10 Q. Would you have any reason to disagree if somebody  
11 said that in person voter fraud is more difficult to  
12 detect than mail in ballot fraud?

13 A. No. I would find it surprising for that to be a  
14 reason to support a bill like Senate Bill 14. If it  
15 were easier to detect voter fraud in the absentee ballot  
16 arena I would think that would be sufficient reason for  
17 that to be addressed through a piece of legislation like  
18 SB 14. And yet it has not been.

19 Q. Did you introduce any bills either in 2009 or '11  
20 to address mail in ballot fraud?

21 A. I personally did not. Though, I believe in one  
22 of those two sessions, perhaps both, I believe that one  
23 of our Senate Democratic members introduced such a bill,  
24 or perhaps introduced as an amendment to the voter ID  
25 bill such a proposal.

44

1 Q. You mentioned you're a lawyer. Do you have -- do  
2 you have any experience with prosecution?

3 A. No, I do not.

4 Q. Are you -- do you have any understanding whether  
5 it is more difficult to prosecute a case of in person  
6 voter fraud than, say, mail in ballot fraud?

7 A. I don't have any understanding of that.

8 Q. Do you have any understanding whether there are  
9 specific political -- well, start over. Do you have any  
10 understanding that there are potential political  
11 consequences to prosecuting voter fraud?

12 A. No.

13 Q. Do you have any understanding whether a  
14 prosecutor who prosecutes voter fraud may be accused of  
15 targeting Democratic voters?

16 A. No.

17 Q. Would you have any reason to disagree with the  
18 contention that prosecuting voter fraud creates  
19 potential for accusations of political bias?

20 A. If other types of voter fraud that are committed  
21 by persons outside minority populations is not  
22 addressed, I believe it's possible that that assumption  
23 might be made.

24 Q. When you say "voter fraud that's committed by  
25 persons outside minority populations," are you referring



45

1 to a specific kind of voter fraud?

2 A. The absentee voter fraud that we talked about a  
3 moment ago.

4 Q. So you contend that -- is it your contention that  
5 mail in ballot fraud or absentee voter fraud, is it more  
6 likely to be committed by persons who aren't members of  
7 minorities?

8 A. I believe there's evidence that in person mail in  
9 voter fraud is occurring at a much more frequent level  
10 than in person voter fraud. And that that fraud is  
11 occurring across all populations and addressing it would  
12 not have a disproportionate impact on persons who are  
13 African-American or Latino. And therefore, it's not  
14 nearly the priority to address by the current  
15 administration in the State of Texas.

16 Q. Is it your understanding that in person voter  
17 fraud is disproportionately engaged in by members of  
18 minority group?

19 A. It's not. But I believe that the bill that was  
20 advanced to, and I'm putting quotations around this  
21 word, "purportedly" addressed in person voter fraud is  
22 known to have a disproportionate impact in  
23 disenfranchising legal voters who are African-Americans  
24 and Latinos in the State of Texas. I don't think in  
25 either instance the question that is really at the heart

46

1 of addressing the fraud for the current administration  
2 is to address the fraud. I believe that it's to impact  
3 the community that will be impacted by it.

4 Q. What is your basis for that statement?

5 A. The discussions and debates that we had as part  
6 of this bill in both the 81st and the 82nd legislative  
7 sessions. The attempts to introduce amendments so that  
8 that disproportionate impact in the African-American and  
9 Latino community would not occur and the unanimous votes  
10 against such amendments by persons in the Republican  
11 party.

12 Q. So it's your contention that because certain  
13 members voted against amendments that were designed to  
14 reduce the impact of voter ID laws on minority voters,  
15 that's evidence that they intended to impact minority  
16 voters?

17 A. We had numerous conversations in the Senate about  
18 how to improve this bill in a way that would allow voter  
19 fraud at the ballot box to be addressed and yet to  
20 alleviate concerns that disenfranchisement would occur.  
21 I find it alarming that if the true intent of this  
22 legislation is to assure integrity at the ballot box,  
23 that efforts to likewise assure that disenfranchisement  
24 is not the consequence of the bill should have been  
25 respected and should have been welcomed as part of

47

1 advancing that piece of legislation. The bipartisan  
2 Baker-Carter report calls for exactly those things. And  
3 where a particular political party issues parts of that  
4 and yet embraces other parts of it, yes, I believe that  
5 that is evidence of what the intention of that piece of  
6 legislation truly is.

7 Q. So it's your position that there were amendments  
8 that would have reduced the discriminatory impact of the  
9 bills?

10 A. Yes.

11 Q. And so you assume -- I mean, that assumes that  
12 there would be the discriminatory impact in the first  
13 place, right?

14 A. Evidence was put forward that the discriminatory  
15 impact would occur, that was put before all members of  
16 the Senate body. And no member discussed or gave any  
17 defensible reason for voting against amendments that  
18 were offered to assure that that disenfranchisement  
19 didn't occur. Instead, without debate on behalf of the  
20 Republican members of the Senate, those pieces -- those  
21 amendments were, for the most part, tabled without any  
22 kind of discussion, without even giving any legitimacy  
23 as to whether valid points were being made in the  
24 advancement of those amendments. In other words, it was  
25 a complete lack of concern about the disparate impact

48

1 that might occur and a predisposed decision to say no to  
2 any amendment that might try to improve upon the bill.

3 Q. Why is that a lack of concern?

4 A. In my opinion, if an amendment that has  
5 demonstrated validity is introduced by a member and  
6 tabled without any kind of discussion on the merits of  
7 the amendment occurs, it shows a lack of concern for the  
8 arguments that are being made.

9 Q. Would it also show a lack of concern if an  
10 amendment were debated, considered and then rejected?

11 A. Not to the same degree, not if the debate were a  
12 genuine and sincere one.

13 Q. Isn't it true though, that if someone didn't  
14 believe there would be any disparate impact, then voting  
15 against an amendment would not necessarily show any lack  
16 of concern?

17 A. I believe that anyone who says to you they  
18 believe there would not be a disparate impact is either  
19 willfully being ignorant of that fact or choosing to  
20 ignore it.

21 Q. You mentioned a moment ago that there was  
22 evidence presented to everybody about a disparate  
23 impact. Can you tell me specifically what that evidence  
24 was?

25 A. It was, as I generally discussed earlier, I don't

49

1 recall the specific testimony that was introduced either  
2 verbally or in writing, but information that  
3 demonstrated that persons in the State of Texas, and  
4 certainly I think following legislative session,  
5 questions that the DOJ has asked of the Secretary of  
6 State has revealed this as well, that persons who are  
7 most likely to be disenfranchised by a law such as this  
8 fall primarily in our lowest income communities, which  
9 unfortunately in the State of Texas are  
10 disproportionately represented by African Americans and  
11 Latinos.

12 Q. Do you recall any specific person who provided  
13 testimony to that effect?

14 A. I don't recall.

15 Q. Do you recall any specific conclusion from any of  
16 the testimony or studies about the disparate impact of  
17 SB 14?

18 A. I don't recall. But I certainly recall us asking  
19 the Secretary of State whether those impacts would occur  
20 and that the members were willing to advance a piece of  
21 legislation without a real clear picture from the  
22 Secretary of State on whether that was going to be the  
23 case. And, in fact, with the Secretary of State being  
24 fairly candid that she had not done an analysis that  
25 would really enable her to make that kind of a

50

1 determination.

2 Q. Do you know if it's possible to do that kind of  
3 analysis?

4 A. Well, certainly I think the DOJ has asked some  
5 very good questions about that in terms of who in the  
6 State of Texas today falls into the category of persons  
7 who currently have voter IDs in the State of Texas and  
8 yet who do not possess Department of Public Safety photo  
9 IDs.

10 Q. Do you know if the data necessary to make that  
11 determination is available -- is it available, period,  
12 in Texas?

13 A. I don't know.

14 Q. If that information weren't available -- let me  
15 ask another question first. So it's your testimony that  
16 the fact that there was no -- there was no determination  
17 of who would be impacted potentially by SB 14, the fact  
18 that there was no determination made shows indifference  
19 toward the impact. Is that true?

20 A. Yes, together with the fact that information had  
21 been provided that that was likely to be the case and  
22 that amendments were introduced that could have  
23 corrected that. Amendments that would not have weakened  
24 the ability for the law to ferret out voter fraud at the  
25 ballot box and yet those amendments were rejected.

51

1 Q. If an amendment provided for or allowed for  
2 non-photo ID, would you contend that that would not  
3 weaken the ability to ferret out in person voter fraud?

4 A. Can you ask that question again?

5 Q. Of course. You mentioned a moment ago amendments  
6 that would not have weakened the ability to ferret out  
7 in person voter fraud?

8 A. Yes.

9 Q. Is it your contention that allowing non-photo  
10 forms of ID would maintain the same ability to ferret  
11 out in person voter fraud?

12 A. I believe that together with some of the other  
13 provisions of the law that could have occurred. There  
14 were very few exceptions that were created as part of  
15 the amendments that were introduced. And I went through  
16 those earlier, where there might be some minor  
17 discrepancy between a person's photo ID and their voter  
18 registration card, where there might be a change of  
19 someone's name because of marriage or divorce, and where  
20 there might be a situation where a person was indigent,  
21 but could provide other forms of voter identification  
22 that would be sufficient to identify them as the person  
23 who was voting.

24 Q. Do you believe that persons who would potentially  
25 have a discrepancy between their photo ID and their

52

1 voter registration are disproportionately members of  
2 minority groups?

3 A. I don't know.

4 Q. Do you contend that people who might have a name  
5 mismatch between their State ID and their voter  
6 registration are disproportionately members of minority  
7 group?

8 A. I don't know.

9 Q. Do you contend that people who may have a  
10 discrepancy in the address on their photo ID and voter  
11 registration are disproportionately members of minority  
12 groups?

13 A. I don't know.

14 Q. But it's your contention that the photo ID  
15 requirement in SB 14 will have a disproportionate impact  
16 on indigent voters?

17 A. I believe that's the case.

18 Q. And you believe that indigent voters will  
19 disproportionately be members of minority groups?

20 A. The evidence that was put in front of us was that  
21 that's the case in population in the State of Texas.

22 Q. Is it your contention that a non-indigent  
23 African-American voters would be impacted differently  
24 than a non-indigent Anglo voter by SB 14?

25 A. I don't know.

53

1 Q. Is it your contention that a non-indigent  
 2 Hispanic voter would be impacted differently by SB 14  
 3 than a non-indigent Anglo voter?  
 4 A. What I can tell you from my understanding is that  
 5 persons who rely on public transportation in the State  
 6 of Texas, while they may not be indigent, again, are  
 7 disproportionately represented by members of our  
 8 African-American and Latino communities. And that many  
 9 of those persons do not currently possess photo IDs  
 10 because they don't have a need for a driver's license.  
 11 And that that, yes, does create a disproportionate  
 12 impact to members of our minority community.  
 13 Q. Is it your understanding that -- well, of the  
 14 people who take -- who use public transportation in  
 15 Texas, is it your understanding that some of those  
 16 people use public transportation because they don't have  
 17 a car?  
 18 A. Yes.  
 19 Q. And perhaps because they're indigent?  
 20 A. Perhaps. But, you know, indigency, I think that  
 21 persons cannot have a car does not necessarily mean that  
 22 they're indigent.  
 23 Q. Thank you. Is it -- then is it your  
 24 understanding that non indigent people who use public  
 25 transportation in Texas are disproportionately

54

1 African-American or Latino?  
 2 A. I believe that public transportation users in the  
 3 State of Texas, certainly in the district that I  
 4 represent, are disproportionately members of our  
 5 African-American and Latino communities. That may not  
 6 be the case in all cities depending on the quality of  
 7 their transportation systems. But certainly in the area  
 8 that I represent it's the case.  
 9 Q. In the area you represent, is it your  
 10 understanding that the majority of people who use public  
 11 transportation are indigent?  
 12 A. It's my belief that the majority of people who  
 13 use public transportation in my district rely on it as  
 14 their means of moving about and that they do it because  
 15 they do not have alternative means of transportation.  
 16 Q. And you don't know whether that's because of  
 17 indigency or some other reason?  
 18 A. No, I don't.  
 19 Q. So is it your testimony, then, that  
 20 African-American and Latino voters will be  
 21 disproportionately impacted even if they aren't indigent  
 22 because they are more likely to use public  
 23 transportation?  
 24 A. I'm saying that there's a greater percentage of  
 25 persons who are African-American and Latino who do not

55

1 currently have driver's licenses in the State of Texas.  
 2 And I believe that the information that's been requested  
 3 of the Secretary of State is being requested in order to  
 4 demonstrate whether that is indeed the case.  
 5 Q. What is your basis for saying that people without  
 6 a driver's license are disproportionately Latino or  
 7 African-American?  
 8 A. It's information that was presented to us during  
 9 these two legislative debates.  
 10 Q. But you can't remember any specific?  
 11 A. I can't recall the specific information, no.  
 12 Q. If it was shown that there was not a significant  
 13 disparity in ID possession between different racial or  
 14 ethnic groups, would you support SB 14?  
 15 A. I would support SB 14 if I didn't believe it were  
 16 going to have a disproportionate impact on persons who  
 17 are indigent. I introduced an amendment that would have  
 18 resolved that concern. Unfortunately, that's not part  
 19 of the law. And I also believe that others will be  
 20 disenfranchised. I don't believe that it's solely  
 21 limited to persons in the minority community, though I  
 22 believe it's certainly the case. With the intention of  
 23 the bill was to pass it with the understanding that  
 24 disproportionately members of our minority communities  
 25 would be disenfranchised as a consequence of it. But I

56

1 believe there's a side effect as well. And that some  
 2 other persons may also be caught unaware and not be able  
 3 to exercise their legal right to vote in the State of  
 4 Texas come November if this law is upheld.  
 5 Q. Are you familiar with any polls regarding support  
 6 for voter ID legislation in Texas?  
 7 A. No.  
 8 Q. Are you aware of whether or not there are  
 9 non-citizens who will register to vote in Texas?  
 10 A. I am not aware.  
 11 Q. Do you contend that there are not non-citizens  
 12 registered to vote in Texas?  
 13 A. I don't contend that.  
 14 Q. Do you believe that the expenditure of State  
 15 resources to take non-citizens off the Texas voter rolls  
 16 would be a waste of money?  
 17 A. No. But I believe in the recommendations of the  
 18 Baker-Carter report, that in order to address concerns  
 19 that that may be the case, that corresponding  
 20 protections for those who may be caught up in the web of  
 21 a solution that's too broad should also be addressed and  
 22 they weren't in Texas.  
 23 Q. Is it your understanding that SB 14 was intended  
 24 to move non-citizens from voter registration list in  
 25 Texas?

57

1 A. I believe that the intension of the bill is as I  
2 said earlier. I believe that if the intention of the  
3 Attorney General's office were really to address voter  
4 fraud in Texas, that absentee voting would have preceded  
5 any kind of conversation on addressing voter fraud.

6 Q. You said "the Attorney General's office," did you  
7 mean the Legislature?

8 A. Well, yes, but certainly the Attorney General's  
9 office has spent multiple millions of dollars trying to  
10 ferret out ballot box voter fraud and yet failed to show  
11 the same energy or enthusiasm in ferreting out  
12 absenteeism ballot fraud.

13 Q. So is it -- are you aware of the cases prosecuted  
14 by the attorney general's office, do you know how many  
15 of those dealt with mail in ballot fraud?

16 A. No.

17 Q. Do you know what percentage dealt with mail in  
18 ballot fraud?

19 A. No.

20 Q. Do you know what percentage dealt with in person  
21 voter fraud?

22 A. No. But I certainly know there was a targeted  
23 amount of money and effort spent on in person voter  
24 fraud. And there was not a corresponding amount of  
25 money and effort spent on determining the extent and

58

1 level to which absentee voter fraud might be occurring.

2 Q. But you don't know how much of that money  
3 actually resulted in prosecution of mail in voter fraud?

4 A. I recall in our testimony before the Senate that  
5 there was a very, very small number of in person voter  
6 fraud cases that were discovered in spite of that  
7 investigation.

8 Q. And is it your recollection that there was a  
9 higher proportion of mail in ballot fraud?

10 A. I don't recall.

11 Q. But if there were a higher proportion of mail in  
12 ballot fraud that was discovered and prosecuted with the  
13 money that you were referring to, then it would not be  
14 accurate to say that there was not an effort to target  
15 mail in ballot fraud?

16 A. I think it would be, certainly support for my  
17 earlier statement that if that revealed a greater  
18 percentage of mail in voter fraud occurring and yet  
19 there were no pieces of legislation advanced to address  
20 it, that that is evidence that one voter fraud is being  
21 ignored where another one is being addressed.  
22 Specifically because of the persons who will be impacted  
23 by one law and not the other.

24 Q. But you don't have any understanding of the  
25 relative difficulty if prosecuting in person versus mail

59

1 in voter fraud?

2 A. No, I don't.

3 Q. Do you believe that elderly voters are less  
4 likely than average to have the ID required by SB 14?

5 A. I do. I recall that being part of the  
6 Baker-Carter report as well. An amendment was

7 introduced to the Senate bill trying to remove its  
8 application from voters, I believe of 65 years of age  
9 and above, who were less likely to have photo ID. My  
10 recollection was that that amendment was not accepted  
11 and instead the floor, I think was set at the age of 70  
12 versus 65. I think that's right.

13 Q. Do you recall whether an exemption of exception  
14 for elderly voters was part of the final bill?

15 A. I believe there was. Again, I don't remember  
16 exactly what the age for it was.

17 Q. Do you believe that disabled voters are less  
18 likely than average to have the ID required by SB 14?

19 A. I don't know.

20 Q. Do you believe that rural voters are less likely  
21 than average to have the ID required by SB 14?

22 A. I don't know. Though I think it is more  
23 difficult for them to get the photo ID that's required.

24 Q. In your understanding was the Legislature aware  
25 that rural voters would have a harder time getting the

60

1 ID required by SB 14?

2 A. I don't recall.

3 Q. Do you believe that SB 14 was enacted for the  
4 purpose of keeping rural voters from voting?

5 A. No, I do not.

6 Q. Why not?

7 A. I don't. I simply don't.

8 Q. But you believe that because it would be more  
9 difficult for a rural voter to obtain the ID, there  
10 might be a disparate impact on rural voters; is that  
11 right?

12 A. There might be.

13 Q. Did the proponents of SB 14 express any concern  
14 for rural voters?

15 A. Not that I recall.

16 Q. Do you believe they were indifferent to rural  
17 voters?

18 A. I don't have a belief one way or the other.

19 Q. But you've testified that you believe the lack of  
20 concern shown for minority voters indicates  
21 indifference; is that right?

22 A. As part of the debate on SB 14, one of the  
23 arguments that I recall being made by members who  
24 represent minority rural communities was that their  
25 voters would have a harder time meeting the requirements

61

1 of getting a photo ID. And arguments were made that in  
2 order for the bill not to have a disproportionate impact  
3 on those persons, that resources needed to be committed  
4 to enhancing the opportunity to access photo ID through  
5 the location of DPS offices that could support that need  
6 and the expansion of hours that could allow that. I  
7 recall those arguments being made.

8 Q. When you say "people who represent minority rural  
9 communities," what do you mean by that?

10 A. I mean members of the Senate who represent  
11 minority rural communities. I don't recall any Anglo  
12 member who represents an Anglo rural community  
13 expressing a concern on behalf of their rural voters.

14 Q. Do Anglo Senators who represent rural  
15 communities, don't they also represent rural minority  
16 voters?

17 A. Some do. Some don't. Not what we would consider  
18 a majority community where the majority of the persons  
19 are minority.

20 Q. To qualify a minority rural community it would  
21 have to be 50 percent?

22 A. Yes. For example, some of the expressed concerns  
23 were specific to the Valley area, to the Colonians, to  
24 areas where people don't have the resources to access a  
25 DPS office. Not because they live in a rural community,

62

1 but because they live in a rural community without  
2 public transportation and they don't possess a vehicle  
3 to have the capacity to transport them. That's the  
4 distinguishing feature between some who live in rural  
5 communities who may have a harder time going to get a  
6 driver's license because it's far away from those who  
7 live in a rural community who simply will not be able to  
8 get a photo ID because they have no means of  
9 transportation to get to the DPS office to begin with.  
10 That was a distinguishing argument made about why there  
11 was a disproportionate impact on persons who fall within  
12 our low-income, minority, rural communities versus those  
13 who do not fall within that category.

14 Q. Is it your understanding that it is easier for  
15 voters who live in non-minority rural communities to get  
16 to a DPS office?

17 A. It's easier for someone who has a car or a means  
18 of transportation to get to a DPS office than it is for  
19 someone who does not. And again, arguments were made,  
20 information was put into the record about what the  
21 impact to persons in our low-income, minority, rural  
22 communities would be. With members giving, I thought,  
23 very compelling testimony about what the impact of  
24 persons who lived in their community would be. Where  
25 there was simply no way for them to go to a DPS office.

63

1 Q. Do you have any knowledge that it would be easier  
2 for a resident of a rural community outside the Valley,  
3 would it be easier for that person to access a DPS  
4 office than a member of a rural community in the Valley?

5 A. I'll just answer the question again this way.

6 It's easier for a person in a rural community who has a  
7 car and a means of transportation to get to a DPS office  
8 and to get a driver's license than it is for someone who  
9 lives in a rural community and does not have a means of  
10 transportation to get a driver's license.

11 Q. Is it your understanding that members of the  
12 rural communities in the Valley have less access to  
13 transportation to cars than members of other rural  
14 communities in Texas?

15 A. It is my understanding that persons who are in  
16 low-income communities have a greater challenge in terms  
17 of access to transportation than those who do not fit  
18 within that category.

19 Q. Do you have any understanding as to the relative  
20 income levels or access to transportation in rural  
21 communities in any part of the State of Texas?

22 A. Well certainly we have areas in the State of  
23 Texas that are poor, much more poor than others. Those,  
24 again, disproportionately are comprised of persons who  
25 are Latino primarily, and in lesser regard,

64

1 African-American.

2 Q. In talking about the rural minority communities  
3 that have problems with access to public transportation  
4 and vehicles, is it your understanding that an Anglo  
5 voter living in that kind of community, say a rural  
6 community in the Valley, would be affected less than a  
7 Latino member of that community by SB 14?

8 A. My distinction is not whether someone is Anglo or  
9 Latino or African-American. The distinction is income  
10 level, poverty, and the ability to access  
11 transportation. I believe it's the case that  
12 disproportionately, that impacts persons in the minority  
13 community. It certainly, I am sure, impacts persons who  
14 are Anglo as well who fit within that category of being  
15 low-income and having no access to transportation.

16 Q. Is it your understanding that younger voters are  
17 less likely to have a form of ID required by SB 14?

18 A. I don't know.

19 Q. Do you know how many Texas registered voters lack  
20 the form of ID required by SB 14?

21 A. I don't know. I will certainly asked that  
22 question.

23 Q. Do you know how many of your constituents don't  
24 have one of the forms of ID required by SB 14?

25 A. No. And again, I sought that information and was

65

1 not given it.  
 2 Q. I know you mentioned that the information was  
 3 sought statewide. How did you seek that information  
 4 about your constituents?  
 5 A. I recall asking that as part of either the Senate  
 6 hearing or perhaps outside the Senate hearing.  
 7 Q. Did you ever attempt to survey your constituents  
 8 to see who lacked a photo ID required by SB 14?  
 9 A. No, I don't.  
 10 Q. Can you identify any one of your constituents who  
 11 lacks one of the IDs required by SB 14?  
 12 A. No, I cannot.  
 13 Q. Are you aware or can you identify any specific  
 14 Texas registered voter who lacks one of the forms of ID  
 15 required by SB 14?  
 16 A. No, I cannot.  
 17 Q. Do you know how many of your constituents do not  
 18 have the underlying documents necessary to get a photo  
 19 ID?  
 20 A. No, I don't.  
 21 Q. Can you identify any specific constituents who  
 22 lacks the documents necessary to get a photo ID?  
 23 A. No, I cannot.  
 24 Q. Can you identify any particular Texas registered  
 25 voter who lacks the documents necessary to get a photo

66

1 ID?  
 2 A. No.  
 3 Q. Are you familiar with the levels of photo ID  
 4 possession by different racial and ethnic groups in  
 5 Texas? And by levels, I mean the proportion of ID  
 6 possession?  
 7 A. No, I don't have particular information about  
 8 that.  
 9 Q. So you don't know what percentage of registered  
 10 African-American voters have a photo ID?  
 11 A. No, I do not.  
 12 Q. And would the same go for Anglo, Asian, Hispanic  
 13 voters?  
 14 A. Correct. What I would say is we certainly should  
 15 have known that before we passed the law that would  
 16 affect so many people.  
 17 Q. Do you know how that would be determined, how one  
 18 would go about determining the level of ID possession by  
 19 various ethnic groups in Texas?  
 20 A. Well, I know the Department of Justice is  
 21 certainly trying to get at the heart of that right now  
 22 by asking the discrepancy of persons who have a driver's  
 23 license in the State of Texas versus those who have  
 24 voter identification cards in the State of Texas.  
 25 Q. Are you aware of any efforts by or on behalf of

67

1 the State of Texas to make that determination as part of  
 2 the preclearance process for SB 14?  
 3 A. I believe that the Secretary of State has been  
 4 asked to do that. I don't know what the status of that  
 5 is.  
 6 Q. Are you -- do you know whether or not the  
 7 Secretary of State has tried to do that?  
 8 A. I don't know.  
 9 Q. You mentioned earlier that you were -- that you  
 10 had read the Crawford case out of Indiana. Are you  
 11 familiar from that or any other source of -- are you  
 12 familiar with the levels of photo ID possession by  
 13 voters in Indiana?  
 14 A. No.  
 15 Q. So you -- you don't know whether -- whether  
 16 African-American voters, for example, in Indiana possess  
 17 photo IDs at a higher rate than African-Americans in  
 18 Texas?  
 19 A. No, I don't.  
 20 Q. And would the same be true for Anglo and Asian  
 21 and Hispanic voters?  
 22 A. That's correct.  
 23 Q. Do you contend that the Texas Legislature  
 24 specifically intended to harm African-American voters by  
 25 enacting SB 14?

68

1 A. Yes, I do.  
 2 Q. And at the risk of asking you to repeat yourself,  
 3 can you explain to me the basis for that belief?  
 4 A. I'll tell you broadly, and then more narrowly.  
 5 Broadly, this session was certainly characterized by  
 6 what I believe was an unprecedented number of pieces of  
 7 legislation that disproportionately impacted our  
 8 minority communities in the State of Texas, particularly  
 9 African-American and Latinos. Both the redistricting  
 10 efforts that were made and the disenfranchisement that  
 11 would occur as a consequence of the maps that were drawn  
 12 through that process. Legislation that was advanced  
 13 under the sanctuary city legislation that would have  
 14 essentially created local police force, immigration  
 15 officers specifically, to have a negative impact in our  
 16 Latino community. Pieces of legislation that were  
 17 advanced in order to remove undocumented persons from in  
 18 State tuitions in the State of Texas as currently exist.  
 19 I think this piece of legislation was part and  
 20 parcel of a broader and purposeful effort to  
 21 discriminate against minorities in the State of Texas.  
 22 More specifically, as I said to you before, I believe  
 23 that valid information was presented to the body of the  
 24 Senate that this legislation would have a  
 25 disproportionate impact on members of the minority



69

1 community. That information was part of the record.  
 2 That information was not disputed by members who  
 3 advanced this legislation. And efforts to help to  
 4 alleviate that disproportionate impact while maintaining  
 5 the integrity of the photo ID bill were ignored, for the  
 6 most part, without so much as even a discussion about  
 7 whether to consider the legitimacy of those  
 8 enhancements. I believe, collectively, all of that  
 9 points to a purposeful effort to suppress minority vote.  
 10 Q. Is it possible that the amendments that you  
 11 believe would have improved the bill and not reduced its  
 12 effectiveness, is it possible that the proponents of the  
 13 bill believed that they would reduce the effectiveness  
 14 of the bill while combatting voter fraud?  
 15 A. I can't say that that's the case. Senator Duncan  
 16 advanced, as I said, the indigent amendment that I had  
 17 initially introduced. I don't know whether he did that  
 18 thinking like a lawyer and wants to make sure that the  
 19 photo ID in the State of Texas could withstand the same  
 20 constitutional scrutiny as occurred in the Indiana case  
 21 or whether he, in his heart, agreed with me that that  
 22 was the right thing to do so as to not disenfranchise  
 23 currently franchised voters.  
 24 But I do know that he moved that amendment in,  
 25 that it was accepted and then it was stripped out. And

70

1 an amendment is not stripped from a bill without  
 2 purposeful action to make that happen. And I do not  
 3 believe that that amendment was removed for any reason  
 4 other than the fact that it would have weakened what was  
 5 the intention of the bill in terms of who would be  
 6 impacted by it.  
 7 Q. So you believe that the provision that would have  
 8 provided an exception for indigent voters was removed  
 9 from the bill specifically to increase the negative  
 10 impact?  
 11 A. Yes, I do.  
 12 Q. On minority voters; is that right?  
 13 A. Yes, I do.  
 14 Q. Has anybody said anything to you that supports  
 15 that belief?  
 16 A. No. But no one has otherwise argued a reason for  
 17 not including it that went to any other purpose.  
 18 Q. And you don't think it's possible that that  
 19 provision was removed from the bill out of a sincere  
 20 belief that it would reduce the bill's effectiveness?  
 21 A. That's not my belief.  
 22 Q. Is there anything specific that that bill is  
 23 based on?  
 24 A. Four years in the Texas Legislature and my  
 25 understanding of the way things are there. I have no

71

1 better way to say it than that.  
 2 Q. Do you contend that individual legislators voted  
 3 in favor of SB 14 for the specific purpose of harming  
 4 African-American voters?  
 5 A. Yes, I do.  
 6 Q. Who do you contend voted for SB 14 for the  
 7 specific purpose of harming African-American voters?  
 8 A. Every person who voted for it.  
 9 Q. Does that include House members and Senate  
 10 members?  
 11 A. Yes. Put a better way, I think they had flagrant  
 12 disregard for whether African-American voters would be  
 13 impacted by the voter ID bill. That's a better way to  
 14 say it. That's how I would prefer to say it.  
 15 Q. Well, I mean, do you or do you not contend that  
 16 individuals voted for SB 14 for the purpose of harming  
 17 African-American voters?  
 18 A. I believe they had flagrant disregard for whether  
 19 it would harm African-American voters. But I believe  
 20 that the bill's author, and in both the House and the  
 21 Senate, had a very purposeful intention of that  
 22 occurring.  
 23 Q. You believe that the bill's authors sponsored and  
 24 voted for SB 14 because they wanted to harm  
 25 African-American voters; is that right?

72

1 A. I believe they wanted to disenfranchise current  
 2 voters in the African-American and Latino communities,  
 3 yes, disproportionately.  
 4 Q. What is your basis for that belief about the  
 5 bill's authors?  
 6 A. I feel that we keep going round and round on this  
 7 question. Again, more information has been advanced  
 8 with regard to voter fraud in the absentee ballot arena.  
 9 It was specifically pointed out to the bill's author as  
 10 part of his introduction to this bill. That were his  
 11 concern truly voter fraud, that his effort and energy  
 12 and legislative direction would have been aimed toward  
 13 that purpose. And he was unable to answer why he chose  
 14 instead, to concentrate his energies on an arena where a  
 15 very, very small amount of fraud had ever been  
 16 demonstrated in the face of an understanding that  
 17 persons would be disenfranchised as a consequence of  
 18 such a law being put in place.  
 19 Q. You assume that the bill's authors had an  
 20 understanding that people would be disenfranchised?  
 21 A. Absolutely. Chairman information was presented  
 22 that demonstrated that that was the case.  
 23 Q. And you believe that that -- it's your contention  
 24 that that information was irrefutable and indisputable?  
 25 A. I believe that it was extremely compelling. And

73

1 that in the face of understanding that that might occur,  
 2 a person who had concern for that impact would have  
 3 acted otherwise in terms of their willingness to accept  
 4 amendments that might address it.  
 5 Q. So if somebody did not find the evidence as  
 6 compelling as you did or that other members might have,  
 7 it's -- you infer from that that they were acting  
 8 because they wanted to hurt minority voters; is that  
 9 right?  
 10 A. That's my inference.  
 11 Q. Did any of the bill's authors ever say anything  
 12 to you that expressly stated their intent to harm any  
 13 minority voter?  
 14 A. No.  
 15 Q. Did any member of the legislature ever make a  
 16 statement to you or to anybody else that you're aware  
 17 of, that they supported SB 14 because they wanted to  
 18 harm minority voters?  
 19 A. No.  
 20 Q. Do you contend that the legislature intended to  
 21 harm Asian-American voters by introducing SB 14?  
 22 A. I don't have an opinion on that.  
 23 Q. Do you contend that the legislature intended to  
 24 harm poor people by passing SB 14?  
 25 A. I believe that the legislature understood there

74

1 would be a disproportionate impact on poor people. And  
 2 that those populations were disproportionately minority.  
 3 Q. Do you believe the legislature intended to harm  
 4 elderly people by passing SB 14?  
 5 A. No, I don't. Not as a group, no.  
 6 Q. Do you believe that any legislator intended to  
 7 harm elderly people by passing SB 14?  
 8 A. No, I don't. Not specifically.  
 9 Q. Well, is it your testimony that you believe SB 14  
 10 will disproportionately impact elderly people?  
 11 A. I didn't say that.  
 12 Q. Okay. I should have phrased my question  
 13 differently. I meant to just ask if that was your  
 14 contention?  
 15 A. I don't have any understanding that that's the  
 16 case.  
 17 Q. Understood. Other than your understanding of the  
 18 effect of SB 14 and awareness of that effect on the part  
 19 of proponents of the bill, is there any other basis for  
 20 your contention that this bill was passed with a  
 21 discriminatory purpose?  
 22 A. No.  
 23 Q. Would you agree that members of the Texas  
 24 Legislature have a duty to represent their  
 25 constituents?

75

1 A. Yes.  
 2 Q. Would you consider that an important duty of any  
 3 elected official to represent constituents and represent  
 4 policy that constituents favor?  
 5 A. Yes.  
 6 Q. Is there anything wrong with a representative  
 7 voting for a policy that's favored by his or her  
 8 constituents?  
 9 A. No.  
 10 Q. Is it political rational for an elected official  
 11 to vote for a policy that's favored by his or her  
 12 constituents?  
 13 A. Well, it's politically rational. Is it always  
 14 right? Perhaps not. Certainly it's been the case in  
 15 the history of the United States that there were  
 16 sentiments that part of the political process that were  
 17 expressly centered at discriminatory purposes. Do I  
 18 believe that a person who's elected by his constituents  
 19 should advance something that's motivated by those  
 20 beliefs, no. Do I believe that all persons who favor  
 21 voter ID in the State of Texas are motivated by racially  
 22 discriminatory intent, no. But I believe that most  
 23 people in our communities don't really understand the  
 24 impact that such a law can have on members of the  
 25 minority community. Nor do I think they understand the

76

1 nuances of how a photo ID bill can be improved, such  
 2 that that disproportionate impact is minimized as much  
 3 as possible. That's our job as legislators to really  
 4 understand the nuances of the laws that we advance.  
 5 Q. So it's not your contention that the majority of  
 6 people in Texas who support voter ID support it for an  
 7 illegitimate reason?  
 8 A. Absolutely not.  
 9 Q. And you don't contend that the majority of people  
 10 in Texas who support voter ID believe it will have a  
 11 disproportionate impact on racial minorities?  
 12 A. No, I do not believe that.  
 13 Q. And it's accurate to say, isn't it, that the  
 14 majority of voters in Texas support voter ID  
 15 legislation; is that right?  
 16 A. I don't know.  
 17 Q. Do you have any basis to dispute the majority of  
 18 voters in Texas support voter ID legislation?  
 19 A. No, I don't.  
 20 Q. So if a representative or a senator whose  
 21 constituents overwhelmingly favored voter ID, voted for  
 22 a voter ID bill, was there anything wrong with that?  
 23 A. I believe if they voted for a voter ID bill where  
 24 evidence had been put in front of them, such that  
 25 persons who were minority would be disproportionately

77

1 impacted by it and that there were ways to improve upon  
 2 it, then I do think there's something wrong with that.  
 3 Q. What if an elected official didn't believe that  
 4 it would have -- that SB 14 or any voter ID bill would  
 5 have a disproportionate racial impact, if they sincerely  
 6 believed that, would there be any illegitimate purpose  
 7 in their voting for the bill?  
 8 A. I can't be in the mind of every legislator,  
 9 obviously. I can only be in my own mind. What I can  
 10 tell you is I believe compelling information was  
 11 produced that should have raised those concerns in the  
 12 minds of reasonable people. And that solutions that  
 13 were advanced that could have eased those concerns  
 14 merited consideration.  
 15 Q. So you mentioned "reasonable people." Do you  
 16 believe that -- do you believe that if a legislator who  
 17 had considered all the evidence that you considered did  
 18 not -- still did not believe that there would be a  
 19 disproportionate racial impact of SB 14, do you believe  
 20 that would be an unreasonable belief?  
 21 A. Yes. I don't know how they could really  
 22 understand it otherwise, with all of the information  
 23 that was put in front of us.  
 24 Q. If a legislator voted for SB 14 based on a  
 25 sincere, but maybe unreasonable belief in its effect,

78

1 would that be an act of intentional discrimination?  
 2 A. Not as you just described it.  
 3 Q. Other than your lawyer, have you discussed this  
 4 lawsuit with anybody?  
 5 A. No, I have not.  
 6 Q. You haven't discussed this lawsuit with any of  
 7 the parties to the lawsuit?  
 8 A. No, I have not.  
 9 Q. Have any of the parties to this lawsuit asked you  
 10 to testify?  
 11 A. Any of the parties?  
 12 Q. Uh-huh.  
 13 A. No.  
 14 Q. Did you speak with anybody at the Department of  
 15 Justice about Senate Bill 14?  
 16 A. Yes, I did.  
 17 Q. With whom did you speak?  
 18 A. I don't recall.  
 19 Q. Did you talk to the DOJ over the telephone?  
 20 A. Yes, I did.  
 21 Q. How many times did you speak to DOJ?  
 22 A. Twice.  
 23 Q. Do you remember, roughly, when that was?  
 24 A. Within the last six months. That's as best I can  
 25 tell you.

79

1 Q. Did you send any letters or e-mails to DOJ about  
 2 SB 14?  
 3 A. I did not, not that I recall.  
 4 Q. Do you remember about how long your telephone  
 5 conversations lasted with DOJ?  
 6 A. I had two conversations. Each lasted probably  
 7 between 30 minutes and an hour.  
 8 Q. Do you recall what you discussed with the  
 9 Department of Justice?  
 10 A. My recollection of the debate about the bill, the  
 11 amendments that I introduced and that others introduced.  
 12 Q. Do you recall whether the Department of Justice  
 13 asked you if you believed SB 14 was passed with a  
 14 discriminatory purpose?  
 15 A. I don't recall them asking me that question  
 16 specifically.  
 17 Q. Do you recall that the Department of Justice  
 18 asked you if you believed SB 14 would have a  
 19 discriminatory effect?  
 20 A. I don't recall them specifically asking me that.  
 21 Q. Do you recall whether you told the Department of  
 22 Justice that SB 14 would have a discriminatory effect?  
 23 A. I don't recall.  
 24 Q. Do you recall whether you told the Department of  
 25 Justice that SB 14 had a discriminatory intent?

80

1 A. I don't recall.  
 2 Q. Did the Department of Justice ask you to provide  
 3 a declaration in this lawsuit?  
 4 A. Not that I recall.  
 5 Q. Did they ask you to provide any kind of statement  
 6 in this lawsuit?  
 7 A. Not that I recall.  
 8 Q. Did they ask you to provide -- did the Department  
 9 of Justice ask you to provide any declaration before  
 10 this lawsuit for purposes of preclearance?  
 11 A. Not that I recall.  
 12 Q. Has the Department of Justice asked you to  
 13 provide any testimony in this lawsuit?  
 14 A. No, they've not.  
 15 Q. Has the Department of Justice asked you to do  
 16 anything in this lawsuit?  
 17 A. No, they've not.  
 18 MR. FREDERICK: At this time I would reserve  
 19 all further questions for the time of trial. Pass the  
 20 witness.  
 21 MR. DUNN: Thank you, Mr. Frederick. Do you  
 22 have any questions, Department of Justice?  
 23 MR. WILLIAMSON: Department of Justice has  
 24 no questions.  
 25 MR. DUNN: Great. We'll reserve for trial.